

FCC FACT SHEET***LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions**
Report & Order – MB Docket No. 18-214, GN Docket No. 12-268

Background: When Congress authorized the Commission to conduct the broadcast television incentive auction as part of the 2012 Spectrum Act, it required the Commission to reimburse certain costs incurred by full power and Class A television licensees that were reassigned to new channels as a result of the auction, as well as certain costs incurred by multichannel video program distributors (MVPDs) to continue to carry such stations. On March 23, 2018, Congress adopted the Reimbursement Expansion Act (REA), which amended the Spectrum Act to expand the list of entities eligible to be reimbursed for auction-related expenses to include LPTV, TV translator, and FM broadcast stations, and to provide additional funds to the Reimbursement Fund to be used for this purpose. The REA also increases the funds available to reimburse full power and Class A stations and MVPDs, and provides funds to the Commission for consumer education. Pursuant to the statutory deadline set forth in the REA, the Commission must adopt a *Report and Order* in this proceeding by March 23, 2019.

What the Order Would Do:

- Conclude that the REA permits the Commission to use the funds appropriated to the Reimbursement Fund for fiscal year 2019 to reimburse eligible LPTV/translator and FM stations as well as full power and Class A stations and MVPDs, and that the Commission will prioritize the payment of those funds to full power, Class A, and MVPD entities over payments to LPTV/translator and FM entities.
- Conclude that LPTV/translator stations are eligible for reimbursement if: (1) they filed an application during the Commission's Special Displacement Window and obtained a construction permit, and (2) they were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017, as required by the REA.
- Conclude that the Commission will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station's Special Displacement Window application.
- Conclude that full power and low power FM stations and FM translators that were licensed and transmitting on April 13, 2017, using the facilities impacted by the repacked television station are eligible for reimbursement under the REA. This includes FM stations that incur costs because they must permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service during a period of time when construction work is occurring on a collocated, adjacent, or nearby repacked television station's facilities.
- Conclude that the Commission will not reimburse LPTV/translator or FM stations for costs for which they have already received reimbursement funding from other sources.
- Discuss the measures the Commission will take to protect the Reimbursement Fund against waste, fraud, and abuse.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket No. 18-214, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
LPTV, TV Translator, and FM Broadcast Station
Reimbursement
Expanding the Economic and Innovation
Opportunities of Spectrum Through Incentive
Auctions
MB Docket No. 18-214
GN Docket No. 12-268

REPORT AND ORDER*

Adopted: []

Released: []

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 3
A. Reimbursement Expansion Act..... 3
B. LPTV and TV Translator Stations and FM Broadcasters 7
C. Full Power, Class A, and MVPD Reimbursement Process..... 11
III. DISCUSSION 16
A. Amounts Available for Reimbursement 16
1. Statutory Interpretation..... 17
2. Prioritization of Fiscal Year 2019 Funds..... 19
B. LPTV and TV Translator Stations – Eligibility and Expenses 22
1. Stations Eligible for Reimbursement..... 23
2. Expenses Eligible for Reimbursement 38
C. FM Broadcast Stations – Eligibility and Expenses 54
1. Stations Eligible for Reimbursement..... 55
2. Expenses Eligible for Reimbursement 64
D. Reimbursement Process 89
1. Eligibility Certification and Estimated Expenses..... 91
2. Reimbursement Allocations 97

* This document has been circulated for tentative consideration by the Commission at its March 2019 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

3. Prioritization of Types of Costs..... 101

4. Procedures for Submission of Invoices, Financial Forms, and Payments..... 103

5. Measures to Prevent Waste, Fraud, and Abuse 107

IV. OTHER ISSUES 111

V. PROCEDURAL MATTERS..... 112

VI. ORDERING CLAUSES..... 115

Appendix A – Final Rules

Appendix B – Final Regulatory Flexibility Analysis

I. INTRODUCTION

1. In this *Report and Order* (Order), we adopt rules to implement Congress’s directive in the 2018 Reimbursement Expansion Act (REA) that we reimburse certain Low Power Television (LPTV) and television translator (TV translator) stations (together LPTV/translator stations), and FM broadcast stations (FM stations), for costs incurred as a result of the Commission’s broadcast television spectrum incentive auction.¹ In the REA, Congress provided additional funding for the TV Broadcaster Relocation Fund (Reimbursement Fund)² and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred as a result of the reorganization of broadcast television spectrum to include LPTV/translator and FM stations.³ This Order adopts rules relating to eligibility, expenses, and procedures the Commission will use to provide reimbursement to these entities, and mandates the use of various measures designed to protect the Reimbursement Fund against waste, fraud, and abuse.

2. As proposed in the *NPRM*, we adopt a process to reimburse the newly eligible entities that is substantially similar to that which we currently use to reimburse full power and Class A stations and multi-channel video programming distributors (MVPDs) as established in the *Incentive Auction R&O*.⁴ As discussed below, we:

- Conclude that the REA permits the Commission to use the funds appropriated to the Reimbursement Fund for fiscal year 2019 to reimburse eligible LPTV/translator and FM stations as well as full power and Class A stations and MVPDs, and that the Commission will prioritize payments to full power, Class A, and MVPD entities over payments to LPTV/translator and FM entities.
- Conclude that LPTV/translator stations are eligible for reimbursement if: (1) they filed an application during the Commission’s Special Displacement Window and obtained a

¹ See Consolidated Appropriations Act 2018, Pub. L. No. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). We refer to this legislation herein as the “Reimbursement Expansion Act” or “REA.” The REA provides that the amount of auction proceeds that the salaries and expenses account of the Commission is required to retain pursuant to 47 U.S.C. § 309(j)(8)(B), including from the proceeds of the forward auction, shall be sufficient to cover the administrative costs incurred by the Commission in making any reimbursements out of the TV Broadcaster Relocation Fund from the amounts appropriated under the REA. 47 U.S.C. § 1452(j)(4).

² See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act).

³ See 47 U.S.C. § 1452(j)(1), (k), (l). The additional funding appropriated to the Reimbursement Fund by the REA also included \$50 million to be available to the Commission to make “payments solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum” under 47 U.S.C. § 1452(b). 47 U.S.C. § 1452(j)(2)(A)(iv).

⁴ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014), *aff’d*, *National Association of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*Incentive Auction R&O*).

construction permit, and (2) were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017, as required by the REA.

- Conclude that we will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station’s Special Displacement Window application.
- Conclude that full power and low power FM stations and FM translators that were licensed and transmitting on April 13, 2017, using the facilities impacted by the repacked television station are eligible for reimbursement under the REA. We find that this will include FM stations that incur costs because they must permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service during a period of time when construction work is occurring on a collocated, adjacent, or nearby repacked television station’s facilities.
- Conclude that we will reimburse up to 100 percent of the costs eligible for reimbursement for FM stations that must relocate permanently, temporarily or permanently modify facilities, or purchase or modify auxiliary equipment to avoid going silent as a result of the repacking process.
- Conclude that we will not reimburse LPTV/translator or FM stations for costs for which they have already received reimbursement funding from other sources.
- Require LPTV/translator and FM stations seeking reimbursement to file with the Commission one or more forms certifying that they meet the eligibility criteria established in this proceeding for reimbursement, providing information regarding their current broadcasting equipment, and providing an estimate of their costs eligible for reimbursement.
- Find that, after the submission of information, the Media Bureau will provide eligible entities with an allocation of funds to be available for draw down as the entities incur expenses. The Media Bureau will make an initial allocation toward eligible expenses, followed by subsequent allocation(s) as needed, to the extent funds remain for LPTV/translator stations and FM stations in the Reimbursement Fund.
- Conclude that we will use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations, and use the same procedures to provide reimbursement payments to these newly eligible entities.
- Discuss the measures we will take to protect the Reimbursement Fund against waste, fraud, and abuse.

II. BACKGROUND

A. Reimbursement Expansion Act

3. On March 23, 2018, Congress adopted the REA, directing the Commission to “reimburse costs reasonably incurred” by an LPTV/translator station in order to “relocate” to another channel or “otherwise modify” its facility as a result of the reorganization of broadcast television spectrum.⁵ In addition, the REA directs the Commission to “reimburse costs reasonably incurred” by an FM station “for facilities necessary for such station to reasonably minimize disruption of service” as a result of the reorganization of broadcast television spectrum.⁶ The REA also provides additional funding for full

⁵ 47 U.S.C. § 1452(k)(1).

⁶ 47 U.S.C. § 1452(l)(1)(A).

power and Class A stations and MVPDs and provides funding for the Commission to make payments for the purpose of consumer education relating to the reorganization of broadcast television spectrum.⁷

4. As we discussed in the *NPRM*,⁸ the REA appropriates a total of \$1 billion in additional funds for the Reimbursement Fund, \$600 million in fiscal year 2018 and \$400 million in fiscal year 2019.⁹ Of the \$600 million appropriated in fiscal year 2018, the Act authorizes the Commission to use “not more than” \$350 million to make reimbursements to full power and Class A stations and MVPDs pursuant to the Spectrum Act,¹⁰ “not more than” \$150 million to reimburse LPTV/translator stations,¹¹ “not more than” \$50 million to reimburse FM stations,¹² and \$50 million to make “payments solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum” pursuant to the Spectrum Act.¹³

5. Section 511(k)(3) of the REA prohibits duplicative payments to “a low power television station that has been accorded primary status as a Class A television licensee under [47 CFR § 73.6001(a)]” from the Reimbursement Fund.¹⁴ Specifically, such licensee may not receive reimbursement under Section 511(k)(1) of the REA, which provides for reimbursement of eligible displaced

⁷ 47 U.S.C. §§ 1452(j)(2)(A)(i), 1452(j)(2)(A)(iv).

⁸ See *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855, 7858, para. 5 (2018) (*NPRM* and *Order*). The *NPRM* and *Order* in this proceeding was released on August 3, 2018. We received 19 comments from stakeholders in response to the *NPRM*.

⁹ See 47 U.S.C. § 1452(j)(1). The funds will be available upon Commission certification to the Secretary of the Treasury that the funds available prior to the date of REA enactment are likely to be insufficient to reimburse reasonably incurred costs of full power and Class A stations and MVPDs carrying their signals. 47 U.S.C. §§ 1452(j)(2)(A)-(B). These funds remain available “until not later than July 3, 2023.” 47 U.S.C. § 1452(j)(1)(A)-(B).

¹⁰ 47 U.S.C. § 1452(j)(2)(A)(i).

¹¹ 47 U.S.C. § 1452(j)(2)(A)(ii).

¹² 47 U.S.C. § 1452(j)(2)(A)(iii). The REA establishes a number of conditions on the availability and use of the \$1 billion it appropriates to the Reimbursement Fund. See *NPRM*, 33 FCC Rcd at 7858-59, para. 6.

¹³ 47 U.S.C. § 1452(j)(2)(A)(iv). In the *Order* accompanying the *NPRM*, the Commission interpreted this language as providing “at least \$50 million for use by the Commission to fund its efforts to educate consumers about the reorganization of the broadcast television spectrum under 47 U.S.C. § 1452(b), with any unused funds to be returned to the U.S. Treasury.” See *Order*, 33 FCC Rcd at 7893, para. 94 (citing 47 U.S.C. § 1452(j)(3)(A)). In their Comments on the *NPRM*, America’s Public Television Stations, the Corporation for Public Broadcasting, and the Public Broadcasting Service (collectively, PTV) argue that this language in the REA directs the Commission to spend “the entire \$50 million” on consumer education, contending that “Congress determined that at least this full amount of funding is necessary to inform the public.” Comments of America’s Public Television Stations, the Corporation for Public Broadcasting, and the Public Broadcasting Service, at 2 (Sept. 26, 2018) (PTV Comments). Because the *NPRM* did not propose to revisit our findings with respect to consumer education set forth in the *Order*, we find that PTV’s comments are beyond the scope of the *NPRM*. In addition, PTV did not file a Petition for Reconsideration of the *Order*. Further, PTV urges the Commission to work with experienced stations that have transitioned to new channels to “ensure that any expenditures of the consumer education funding are used wisely.” PTV Comments at 4. In the *Order*, we emphasized our commitment to “coordinate closely with industry stakeholders” in our consumer education efforts. See *Order*, 33 FCC Rcd at 7893, para. 94. We appreciate the suggestions PTV offers with respect to consumer education and will consider its comments as we continue to undertake our consumer education initiatives.

¹⁴ 47 U.S.C. § 1452(k)(3). Section 73.6001(a) of the Commission’s rules provides that “[q]ualified low power television licensees which, during the 90-day period ending November 28, 1999, operated their stations in a manner consistent with the programming and operational standards set forth in the Community Broadcasters Protection Act of 1999, may be accorded primary status as Class A television licensees.” 47 CFR § 73.6001(a). Low power television stations that did not qualify for Class A status are secondary. See *id.* § 74.702(b).

LPTV/translator stations, if such station has received reimbursement under Section 6403(b)(4)(A)(i) of the Spectrum Act (including the additional funding made available for reimbursing full power, Class A, and MVPDs in Section 511(j)(2)(A)(i) of the REA).¹⁵ Conversely, Section 511(k)(3)(B) specifies that if such station receives reimbursement under Section 511(k)(1) of the REA, it may not receive reimbursement under Section 6403(b)(4)(A)(i) of the Spectrum Act.¹⁶ Section 511(k)(3)(A) also provides that if a low power television station that has been accorded primary status as a Class A television licensee receives reimbursement “from any other source, such station may not receive reimbursement under paragraph 1” of Section 511(k), which permits reimbursement of costs reasonably incurred by eligible LPTV/translator stations that filed in the Special Displacement Window.¹⁷ Section 511(l)(1)(C) states that “[i]f an FM broadcast station has received a payment for interim facilities from the licensee of a television broadcast station that was reimbursed for such payment” under the Spectrum Act, “or from any other source,” such FM station may not receive reimbursement under the REA.¹⁸

6. Finally, the REA requires the Commission to complete a rulemaking to implement a reimbursement process for LPTV/translator and FM stations “[n]ot later than 1 year” after the adoption of the Act, or by March 23, 2019.¹⁹ It also directs that the rulemaking include “the development of lists of reasonable eligible costs to be reimbursed by the Commission” and “procedures for the submission and review of cost estimates and other materials related to those costs consistent with the regulations developed by the Commission” in establishing the reimbursement process for full power, Class A, and MVPD entities.²⁰

B. LPTV and TV Translator Stations and FM Broadcasters

7. *LPTV and TV Translators.* LPTV/translator stations are secondary to full power and Class A television stations, which may be authorized and operated “without regard to existing or proposed low power TV or TV translator stations.”²¹ LPTV/translator stations were not eligible to participate in the incentive auction and were not eligible for reimbursement pursuant to the Spectrum Act.²² In addition, while the Spectrum Act required the Commission to make “all reasonable efforts” to preserve the coverage area and population served of eligible full power and Class A television stations in the incentive auction repacking process,²³ LPTV/translator stations were not protected.²⁴ Accordingly, the *Incentive Auction R&O* noted the potential for a significant number of LPTV/translator stations to be displaced as a result of the auction or repacking process, which would require them either to find a new channel from

¹⁵ 47 U.S.C. § 1452(k)(3)(A).

¹⁶ 47 U.S.C. § 1452(k)(3)(B).

¹⁷ 47 U.S.C. § 1452(k)(1), (3)(A). *See also infra* paras. 8-9 (discussing the Special Displacement Window).

¹⁸ 47 U.S.C. § 1452(l)(1)(C).

¹⁹ 47 U.S.C. § 1452(m)(1).

²⁰ 47 U.S.C. § 1452(m)(2).

²¹ 47 CFR § 74.702(b). These secondary stations may not cause interference to, and must accept interference from, full-service television stations, certain land mobile radio operations, and other primary services. *See Incentive Auction R&O*, 29 FCC Rcd at 6673-74, para. 239.

²² *Incentive Auction R&O*, 29 FCC Rcd at 6716-17, para. 352, and 6813, para. 601.

²³ 47 U.S.C. § 1452(b)(2). *See also Incentive Auction R&O*, 29 FCC Rcd at 6652, para. 185.

²⁴ *See Incentive Auction R&O*, 29 FCC Rcd at 6652, para. 185 and § III.B.3.d.iii. (Facilities That Will Not Receive Discretionary Protection: LPTV and TV Translator Stations). The Commission also determined it would not extend interference protection to LPTV or TV translator stations vis-à-vis Class A television stations in the repacking process. *Id.* at 6676, para. 244. For a more detailed discussion of the incentive auction, repacking process, and transition period, *see NPRM*, 33 FCC Rcd at 7860-61, paras. 9-12.

the smaller number of channels that remain in the reorganized broadcast television bands or to discontinue operations altogether.²⁵

8. As discussed in the *NPRM*,²⁶ the Commission has taken a number of steps to mitigate the impact of the auction and repacking process on LPTV/translator stations.²⁷ For example, the Media Bureau opened a special filing window (Special Displacement Window) on April 10, 2018, to offer operating LPTV/translator stations that are displaced an opportunity to select a new channel.²⁸ The displacement window closed on June 1, 2018.²⁹ The Commission received 2,164 applications during the Special Displacement Window. After processing those applications and providing a Settlement Window for the resolution of mutually exclusive applications from October 20, 2018 to January 10, 2019,³⁰ to date the Commission has disposed of [1,927] applications. For those applications that remain mutually exclusive after the Settlement Window, auction procedures and a schedule will be set for them to be resolved subject to the Commission's competitive bidding rules.³¹

9. As discussed in the *NPRM*, some LPTV/translator stations have already been displaced.³² The Commission provided tools to these "early displaced" LPTV/translator stations to ensure that they

²⁵ See *Incentive Auction R&O*, 29 FCC Rcd at 6834-35, para. 657.

²⁶ See *NPRM*, 33 FCC Rcd at 7862-63, para. 14.

²⁷ For instance, the Commission adopted rules to allow secondary stations to enter into voluntary channel sharing arrangements with other secondary stations and with primary stations. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14937-45, paras. 20-39 (2015) (*LPTV DTV Third R&O*); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Report and Order, 32 FCC Rcd 2637 (2017). The Commission also extended the deadline for analog LPTV/translator stations to complete their transition from analog to digital facilities from September 1, 2015 to 12 months after the completion of the 39-month transition period, or until July 13, 2021. *LPTV DTV Third R&O*, 30 FCC Rcd at 14930-31, para. 6. Further, the Commission allowed LPTV/translator stations to remain on their existing channels in the 600 MHz Band, the spectrum cleared for use by wireless providers, until they are notified that they are likely to interfere with a forward auction winner that is ready to commence operations. *Incentive Auction R&O*, 29 FCC Rcd at 6835, para. 657, and 6840, para. 670.

²⁸ *Incentive Auction R&O*, 29 FCC Rcd at 6835, para. 657. Prior to opening the window, the Commission released a channel study to help LPTV/translator stations identify potential new channels in the repacked television band.

²⁹ See *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, And Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd 1234 (IATF and MB, 2018) (*Special Displacement Window PN*); *Incentive Auction Task Force and Media Bureau Extend Post-Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, DA 18-389 (IATF and MB, rel. April 18, 2018) (*Special Displacement Window Extension PN*).

³⁰ See *Incentive Auction Task Force and Media Bureau Announce Settlement Opportunity for Mutually Exclusive Displacement Applications Filed During the Special Displacement Window, October 30, 2018 to January 10, 2019*, Public Notice, DA 18-1108 (rel. Oct. 30, 2018).

³¹ *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860, 3866-67, paras. 14-16 (IATF and MB 2017) (*LPTV Procedures Public Notice*). This means an auction under the Commission's rules. See 47 CFR § 73.5000 *et seq.*

³² See *NPRM*, 33 FCC Rcd at 7863, para. 15. Pursuant to our rules, LPTV/translator stations that were on channels 38 through 51 must terminate operations if they receive notice of likely interference to a new 600 MHz Band licensee that intends to commence operations or conduct first field application (FFA) testing on their licensed 600 MHz spectrum. See *Incentive Auction R&O*, 29 FCC Rcd at 6839-40, paras. 668-71, and 6840, n.1863. The Commission has granted a number of 600 MHz licenses which authorize the licensees to construct facilities on their

(continued....)

would be able to continue to broadcast, including allowing a displaced station to submit a displacement application prior to the opening of the Special Displacement Window and to file for Special Temporary Authority to operate temporarily the facility proposed in the displacement application.³³ Approximately 340 displacement applications were filed prior to the Special Displacement Window pursuant to the *Displacement Tools PN*. Independent of the *Displacement Tools PN*, T-Mobile created a Supplemental Reimbursement Plan whereby it committed to pay the reasonable costs associated for such stations to move from a temporary channel to a permanent channel if the station's displacement application for the temporary channel was not granted and the station therefore needs to move twice.³⁴ In addition, T-Mobile and PBS announced in June 2017 that T-Mobile had committed to cover the costs for PBS translator stations to relocate their frequencies following the incentive auction.³⁵

10. *FM Stations.* FM stations were not eligible to participate in the incentive auction, were not subject to the repacking process, and were not eligible for reimbursement pursuant to the Spectrum Act.³⁶ While FM spectrum was not subject to reorganization in the repacking process, FM stations may be affected by the reorganization of broadcast television spectrum if, for example, an FM station shares a tower with a repacked television station. Changes to the facilities of the television station could affect the FM station if, for example, the FM station antenna must be moved, either temporarily or permanently, to accommodate the television station's change or if an FM station needs to power down, or cease operating temporarily, to permit a repacked television broadcaster to modify its facilities. As indicated in the *NPRM*,³⁷ we estimate that fewer than 500 full-service FM stations will be affected by the repacking process.

(Continued from previous page) _____

new spectrum. See *Incentive Auction Task Force and Wireless Telecommunications Bureau Grant 600 MHz Licenses*, Public Notice, 32 FCC Rcd 4832 (2017), 32 FCC Rcd 5684 (2017), 32 FCC Rcd 9280 (2017), 33 FCC Rcd 98 (2018), 33 FCC Rcd 869 (2018), 33 FCC Rcd 6339 (2018), 33 FCC Rcd 7358 (2018), DA 18-1219 (2018), DA-1232 (2018). T-Mobile USA (T-Mobile), one of the recipients of those licenses, provided notices to certain LPTV/translator stations that it would commence operations or conduct FFA testing on some of its licensed spectrum before the opening of the Special Displacement Window.

³³ See *Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943, 4945, paras. 5-7 (2017) (*Displacement Tools PN*). See also *infra* para. 30.

³⁴ Letter from Steve B. Sharkey, Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-306, et al. (filed July 17, 2017) (T-Mobile July 17, 2017 *Ex Parte*).

³⁵ Letter from Steve B. Sharkey, Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-306, et al., at 1 (filed Aug. 4, 2017). The letter also references a press release by PBS, reporting that "T-Mobile has committed to covering the costs for local public television low power facilities that are required to relocate to new broadcasting frequencies following the government's recent spectrum incentive auction." *Id.* at n.2 (citing PBS, Press Release, Public Joins Forces With T-Mobile to Preserve Access to Public Television for Millions in Rural America (June 29, 2017), available at <http://to.pbs.org/2tteX4V>). See also Letter from Talia Rosen, Assistant General Counsel and Senior Director, Standards & Practices, PBS, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-306 (filed May 30, 2018) (PBS May 30, 2018 *Ex Parte*).

³⁶ In the *Incentive Auction R&O*, the Commission noted that, in some cases, stations that are not reassigned to new channels but that sustain expenses due to the repacking process may be reimbursed indirectly, e.g., where multiple stations share a tower, a reassigned station that makes changes may be required by contract to cover certain expenses incurred by other tower occupants. See *Incentive Auction R&O*, 29 FCC Rcd at 6813-14, para. 602. The Commission clarified, however, that in such a situation only the reassigned station would under certain circumstances be eligible to seek reimbursement from the Reimbursement Fund for any such costs. *Id.* at 6814, n.1698.

³⁷ See *NPRM*, 33 FCC Rcd at 7864, para. 16.

C. Full Power, Class A, and MVPD Reimbursement Process

11. As proposed in the *NPRM*,³⁸ this *Report and Order* adopts a reimbursement process for entities newly eligible for reimbursement pursuant to the REA that closely mirrors the process currently underway for full power, Class A, and MVPD entities. We briefly summarize the current reimbursement process below.³⁹

12. Following the release of the *Closing and Channel Reassignment PN*, full power, Class A, and MVPD entities seeking reimbursement provided information regarding their existing broadcasting equipment and their plan to accomplish the channel transition, including an estimate of their eligible costs,⁴⁰ by filing FCC Form 2100, Schedule 399 (the Reimbursement Form), in the Media Bureau's Licensing and Management System (LMS).⁴¹ Estimated costs could be provided by the entity or by using predetermined cost estimates based on the Catalog of Potential Expenses and Eligible Costs (Catalog of Reimbursement Expenses, or Catalog)⁴² developed by the Media Bureau.⁴³ The Catalog sets forth categories of expenses that are most likely to be commonly incurred by broadcasters and MVPDs as a result of the repacking process, together with ranges of prices for the potential expenses. The Media Bureau, with assistance from a contractor with extensive experience in television broadcast engineering and Federal funds management (Fund Administrator), reviews the cost estimates.

13. The Commission's goal is to ensure that reimbursement funds are allocated fairly and consistently across all eligible entities and, at the same time, to have sufficient flexibility to make reasoned allocation decisions that maximize the funds available for reimbursement. To this end, reimbursement funds are being allocated by the Media Bureau in tranches, with the allocation amounts calculated based in part on the total amount of repacking expenses reported on the estimated cost forms as well as the amount of money available in the Reimbursement Fund.⁴⁴ The allocation is available for draw down and reimbursement from the U.S. Treasury as the entities incur expenses eligible for reimbursement and submit invoices that are approved for payment.

³⁸ See *id.* at 7856, 7887-92, paras. 2, 75-89.

³⁹ The current reimbursement process was summarized in more detail in the *NPRM*. See *id.* at 7864-66, paras. 17-22.

⁴⁰ See *Incentive Auction R&O*, 29 FCC Rcd at 6815-16, para. 607. Eligible broadcasters must estimate the costs they expect to reasonably incur to change channels, and eligible MVPDs must estimate the costs they expect to reasonably incur to accommodate new channel assignments. *Id.* at 6817-18, para. 611.

⁴¹ See *id.* at 6817, para. 610; *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, Public Notice, 30 FCC Rcd 11701 (2015). Entities were required to file the estimated cost forms within three months following the release of the *Closing and Channel Reassignment PN*. See *Incentive Auction R&O*, 29 FCC Rcd at 6817, para. 610. These forms are filed with the Commission electronically, and entities must update the form if circumstances change substantially. *Id.*

⁴² See *Incentive Auction Task Force and Media Bureau Finalize Catalog of Reimbursement Expenses*, Public Notice, 32 FCC Rcd 1199 (2017) (Catalog of Potential Expenses and Estimated Costs attached as Appendix) (*Finalized Catalog of Reimbursement Expenses PN*).

⁴³ As discussed below, the Media Bureau has sought comment on a proposed cost catalog of potentially reimbursable costs that may be incurred by LPTV/translator and FM stations as a result of the incentive auction. See *infra* para. 94. The Media Bureau will release a final cost catalog for these entities prior to the start of the reimbursement process for newly eligible entities.

⁴⁴ See *Incentive Auction Task Force and Media Bureau Announce the Initial Reimbursement Allocation for Eligible Broadcasters and MVPDs*, Public Notice, 32 FCC Rcd 7556 (2017) (*Initial Allocation PN*). In the *Incentive Auction R&O*, the Commission stated its intention to issue NCE broadcasters initial allocations equivalent to up to 90 percent of their estimated costs eligible for reimbursement, and all other broadcasters and MVPDs initial allocations equivalent to up to 80 percent of their estimates costs eligible for reimbursement. See *Incentive Auction R&O*, 29 FCC Rcd at 6818-19, para. 614.

14. Entities draw down against their individual allocations using the Reimbursement Form to report incurred expenses and upload invoices or receipts into LMS. To facilitate the disbursement of reimbursement payments, entities are also required to submit payment instructions to the Commission by (i) submitting a signed and notarized FCC Form 1876, along with a bank account verification letter or redacted bank statement that confirms ownership of the bank account, for each Facility ID/File Number receiving a reimbursement payment; and (ii) entering bank account information for the reimbursement payment recipient in the CORES Incentive Auction Financial Module.⁴⁵

15. Prior to the end of the reimbursement period, entities must provide information regarding their actual and remaining estimated costs and will be issued a final allocation, if appropriate, to cover the remainder of their eligible costs.⁴⁶ If any allocated funds remain in excess of the entity's actual costs determined to be eligible for reimbursement, those funds will revert back to the Reimbursement Fund.⁴⁷ In addition, if an overpayment is discovered, even after the final allocation has been made, entities will be required to return the excess to the Commission.⁴⁸

III. DISCUSSION

A. Amounts Available for Reimbursement

16. We conclude that the REA permits the Commission to use the funds appropriated to the Reimbursement Fund for fiscal year 2019 to reimburse eligible LPTV/translator and FM stations as well as full power and Class A stations and MVPDs. We also conclude that the Commission will prioritize payments to full power, Class A, and MVPD entities over payments to LPTV/translator and FM stations. Specifically, we will use the \$400 million appropriated for fiscal year 2019 first to reimburse full power, Class A, and MVPD entities for any expenses eligible for reimbursement that have not already been reimbursed before using any remaining fiscal year 2019 funds to reimburse LPTV/translator and FM stations for eligible expenses not already reimbursed above the amounts allocated for those purposes by the REA for fiscal year 2018. All commenters that address the issue of the Commission's discretion to use fiscal year 2019 funds agree that the statute permits the funds to be used to reimburse any eligible recipient of reimbursement funds.⁴⁹ No commenter argues that the \$400 million for fiscal year 2019 is only available to reimburse eligible full power and Class A stations and MVPDs.⁵⁰

1. Statutory Interpretation

17. The REA appropriates a total of \$1 billion in additional funds for the Reimbursement Fund, \$600 million in fiscal year 2018 and \$400 million in fiscal year 2019.⁵¹ Section 511(j)(2) of the

⁴⁵ See *Procedures for Submitting Financial Information Required for the Disbursement of Incentive Payments and Reimbursement Payments after the Incentive Auction Closes*, Public Notice, 32 FCC Rcd 2003, 2022-26, paras. 66-79 (2017) (*Financial Procedures PN*).

⁴⁶ See *Incentive Auction R&O*, 29 FCC Rcd at 6819, para. 616.

⁴⁷ *Id.*

⁴⁸ *Id.* at 6815-16, para. 607 and 6826, para. 635, n.1770.

⁴⁹ See Comments of the National Association of Broadcasters, at 4-6 (Sept. 26, 2018) (NAB Comments); Comments of National Public Radio, Inc., at 12 (Sept. 26, 2018) (NPR Comments); Reply Comments of HC2 Broadcasting Holdings Inc., at 2 (Oct. 26, 2018) (HC2 Reply). See also Comments of the American Cable Association, at 2-3 (Sept. 26, 2018) (ACA Comments) (arguing that the Commission should interpret the REA to give MVPDs and full power and Class A stations priority access to fiscal year 2019 funds).

⁵⁰ See *NPRM*, 33 FCC Rcd at 7866, para. 24 (seeking comment on whether fiscal year 2019 funds were available only to reimburse full power, Class A, and MVPD entities).

⁵¹ See 47 U.S.C. § 1452(j)(1)(A)-(B). As contemplated in the REA, the Commission certified to the Secretary of the Treasury that the funds available prior to the date of REA enactment are likely to be insufficient to reimburse reasonably incurred costs of full power and Class A stations and MVPDs carrying their signals, and Treasury has

(continued....)

REA discusses the “availability of funds” and provides that, if the Commission makes the required certification, “amounts made available to the TV Broadcaster Relocation Fund by [Section 511(j)(1)] shall be available to the Commission to make” certain specified payments.⁵² In particular, Section 511(j)(2)(A) states that funds appropriated in Section 511(j)(1) shall be available to the Commission to make payments required by the Spectrum Act and the REA, including “not more than” \$350 million to reimburse full power and Class A stations and MVPDs from fiscal year 2018 funds, “not more than” \$150 million to reimburse LPTV and TV translator stations from fiscal year 2018 funds, and “not more than” \$50 million to reimburse FM stations from fiscal year 2018 funds.⁵³ It also states that funds appropriated in Section 511(j)(1) shall be available to the Commission to make payments “solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum,” including \$50 million from the funds available for fiscal year 2018.⁵⁴ The REA contains no such express delineation of how the funds available for fiscal year 2019 are to be allocated. We sought comment in the *NPRM* on whether the \$400 million appropriated to the Reimbursement Fund for fiscal year 2019 is available only to reimburse eligible full power and Class A stations and MVPDs or whether the REA also permits this money to be used to reimburse LPTV, TV translators, and FM stations as well as to fund the Commission’s consumer education efforts.⁵⁵

18. We conclude that the REA does not prohibit use of the \$400 million appropriated to the Reimbursement Fund for fiscal year 2019 from being paid to any specific category of eligible station or for consumer education. This interpretation of the statute is consistent with widely-accepted principles of statutory construction. The REA contains no limitations on how to allocate the fiscal year 2019 funds among the various eligible entities and consumer education.⁵⁶ Therefore, we believe the text of the statute plainly provides the Commission with authority, or at minimum can reasonably be construed as providing

(Continued from previous page) _____
provided the funds contemplated in the REA in the TV Broadcaster Relocation Fund. 47 U.S.C. §§ 1452(j)(2)(A)-(B).

⁵² 47 U.S.C. § 1452(j)(2)(A).

⁵³ 47 U.S.C. § 1452(j)(2)(A)(i)-(iii).

⁵⁴ 47 U.S.C. § 1452(j)(2)(A)(iv).

⁵⁵ See *NPRM*, 33 FCC Rcd at 7866, para. 24.

⁵⁶ Section 1452(j)(1) appropriates to the TV Broadcaster Relocation Fund \$600 million for fiscal year 2018 and \$400 million for fiscal year 2019. We note that Sections 1452(k)(1) and 1452(l)(1)(A) provide that the Commission shall reimburse LPTV/translator stations and FM broadcast stations, respectively, “[f]rom amounts made available under [Section 1452(j)(2)].” 47 U.S.C. §§ 1452(k)(1), 1452(l)(1)(A). Section 1452(j)(2), in turn, refers to funds “made available by [Section 1452(j)(1)(A)],” which pertains to funds appropriated for fiscal year 2018, and does not refer to Section 1452(j)(1)(B), which pertains to funds appropriated for fiscal year 2019. 47 U.S.C. § 1452(j)(2)(A)(ii)-(iii). This language specifying that reimbursements shall come from “amounts made available under [Section 1452(j)(2)]” does not apply to full-power stations, Class A stations, or MVPDs. While Section 1452(j)(2) refers to funds appropriated for fiscal year 2018, however, it does not limit reimbursement to fiscal year 2018 funds. Section 1452(j)(2) provides that the amounts the REA makes available to the Commission under Section 1452(j)(1), which pertains to both fiscal year 2018 and fiscal year 2019 funds, shall be used to make the required reimbursements, “including not more than” \$150,000,000 from fiscal year 2018 funds for LPTV/translators, “including not more than” \$50,000,000 from fiscal year 2018 funds for FM broadcast stations, and “including” \$50 million from fiscal year 2018 funds for consumer education. The term “including” establishes that LPTV/translators, FM broadcast stations, and consumer education efforts are not limited to reimbursement from fiscal year 2018 funds. Thus, the REA does not prohibit the use of fiscal year 2019 funds from being paid to any specific category of eligible station. *Federal Land Bank v. Bismark Lumber Co.*, 314 U.S. 95, 100 (1941) (“[T]he term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.”); *Exxon Corporation v. Lujan*, 730 F. Supp. 1535, 1545 (D. Wyoming, 1990), *aff’d on other grounds*, 970 F.2d 757 (10th Cir. 1992) (use of the word “includes” indicates that what follows is nonexclusive and may be enlarged upon).

the Commission with authority, to use fiscal year 2019 funds to reimburse all entities eligible under the statute and for consumer education.

2. Prioritization of Fiscal Year 2019 Funds

19. We will prioritize the payment of fiscal year 2019 funds to full power and Class A stations and MVPDs over the payment of newly eligible LPTV/translator and FM stations.⁵⁷ After eligible full power, Class A, and MVPD entities have been reimbursed using fiscal year 2019 funds, any funds remaining from the \$400 million appropriated for fiscal year 2019 will be used to reimburse eligible LPTV/translators and FM stations. We agree with ACA that this approach toward prioritization of fiscal year 2019 funds is most consistent with Congress's intent with respect to reimbursement.⁵⁸ Full power, Class A, and MVPD entities were Congress's top priority for reimbursement when it adopted the Spectrum Act, which established the Reimbursement Fund and allocated \$1.75 billion to be used to reimburse eligible full power and Class A stations and MVPDs for their incentive auction-related expenses.⁵⁹ Further, in the REA, Congress appropriated \$350 million for full power, Class A, and MVPD entities in fiscal year 2018 as compared with appropriations of \$150 million for LPTV/translator stations and \$50 million for FM stations in fiscal year 2018.⁶⁰ In light of Congress's prioritization of full power, Class A, and MVPD entities with respect to the amount of money appropriated for reimbursement of these entities, we believe it is appropriate to use the \$400 million appropriated for fiscal year 2019 to first reimburse full power, Class A, and MVPD entities before using any remaining fiscal year 2019 funds to reimburse newly eligible entities.

20. While no commenter argued that the Commission should not prioritize between eligible entities if there is a shortfall of funds, some contend that the Commission should postpone a prioritization decision until more information is available. However, we disagree with NAB and HC2 that we should wait to adopt a prioritization scheme until after LPTV/translator and FM stations have submitted cost estimates and, at that point, only if it becomes clear that the demand on repacking funds will exceed the funds available, making prioritization necessary.⁶¹ If the Commission were to defer making a prioritization decision until LPTV/translator and FM station cost estimates are submitted and evaluated by the Commission and Fund Administrator, this could delay payments to all reimbursable entities from the

⁵⁷ See *NPRM*, 33 FCC Rcd at 7866-67, para. 25. See also ACA Comments at 2-3; Reply Comments of the American Cable Association, at 2 (Oct. 26, 2018) (ACA Reply) (urging the Commission to make clear that MVPDs and full power and Class A stations "will be made completely whole" before 2019 funds are used for other purposes).

⁵⁸ See ACA Comments at 3. ACA notes that, given the already high demand for reimbursement from full power and Class A broadcasters and MVPDs and the expectation of further requests, particularly from small cable operators, it is likely that the additional \$350 million appropriated in the REA for these entities in 2018 will not be enough to reimburse these entities for all eligible expenses. See ACA Reply at 3.

⁵⁹ See ACA Comments at 2-3, 5. See also 47 U.S.C. § 1452. The Spectrum Act requires the Commission to reimburse full power and Class A television licensees for costs "reasonably incurred" in relocating to their new channels assigned in the repacking process, and to reimburse MVPDs for costs "reasonably incurred" in order to continue to carry the signals of stations relocating to new channels as a result of the repacking process or a winning reverse auction bid. 47 U.S.C. §§ 1452(b)(4)(A)(i), (ii). The Spectrum Act directed the Commission to make reimbursements from the Reimbursement Fund established by Congress for that purpose and specified that the amount available for reimbursement of relocation costs was \$1.75 billion. See *id.* § 1452(d).

⁶⁰ 47 U.S.C. § 1452(j)(2)(A)(i)-(iii).

⁶¹ See NAB Comments at 6-7 (arguing that the Commission should adopt a prioritization scheme for fiscal year 2019 funds "only if the facts prove that prioritization is necessary which will be known once FM radio and LPTV stations have submitted costs estimates under the rules adopted in this proceeding."); HC2 Reply at 2-3 (arguing that the Commission should only make a determination how fiscal year 2019 funds should be allocated "after it has collected adequate data about the funding needs of all stakeholders" and should determine whether and how to prioritize payments "only after understanding . . . whether or not there will be a shortfall of funds").

fiscal year 2019 funds, as none of those funds could be spent until a full assessment of the demand of all entities was completed. In addition, establishing a prioritization method later could require additional public comment, further delaying the distribution of fiscal year 2019 funds. As noted above, our determination that the \$400 million allocated for 2019 should be used first to pay full power, Class A, and MVPD entities is consistent with congressional priorities, making any delay in developing a prioritization scheme unnecessary.

21. We also decline to adopt NAB's argument that primary full power FM stations should be prioritized over secondary LPTV and TV translator stations.⁶² NAB argues that, because LPTV stations are secondary licensees and therefore subject to displacement by full power and Class A television stations, they should "yield to primary licensees with respect to reimbursement" as they do with respect to licensing.⁶³ We reject this approach. The text of the statute suggests no such priority for FM stations vis-à-vis LPTV and TV translator stations, which serve as an important source of programming in many communities.

B. LPTV and TV Translator Stations – Eligibility and Expenses

22. The REA authorizes the Commission to reimburse "costs reasonably incurred by a television translator or low power television station on or after January 1, 2017, in order for such station to relocate its television service from one channel to another channel or otherwise modify its facility as a result of the reorganization of broadcast television spectrum" under Section 6403(b) of the Spectrum Act.⁶⁴ In this section, we adopt rules related to eligibility and expenses under the REA provisions for reimbursement of displaced LPTV/TV translator stations.

1. Stations Eligible for Reimbursement

a. LPTV/Translator Stations

23. We find that pursuant to the REA, LPTV/TV translator stations, as defined by the Commission's rules,⁶⁵ are eligible for reimbursement from the Reimbursement Fund if they satisfy the criteria described below.⁶⁶

⁶² See NAB Comments at 8. Specifically, NAB proposes that "[f]irst, the Commission should allocate funds...to ensure FM stations are reimbursed for 80 percent of actual or estimated costs and that FM stations are allocated at least the \$50 million specified for FY 2018 funds. Second, the Commission should fully reimburse full power and Class A television stations that are involuntarily repacked. Third, the Commission should, assuming funds are available, fully reimburse FM radio stations affected by the repacking process. Fourth, the Commission should use remaining funds to reimburse displaced LPTV stations and translators for any costs exceeding \$150 million." *Id.* See also ACA Reply at 2-3 (agreeing that secondary licensees should yield to primary licensees and MVPDs with respect to reimbursement). NAB also stated that "[a]mong full-power licensees, if the Commission is forced to establish rules for prioritization due to a shortfall in funds, full power and Class A television stations should receive priority because they will be moving to new permanent facilities." NAB Comments at 8.

⁶³ See NAB Comments at 8.

⁶⁴ 47 U.S.C. § 1452(k)(1).

⁶⁵ As directed by the statute, we define "television translator station" and "low power television station" pursuant to the definition included in Commission rules. 47 U.S.C. § 1452(k)(5)(A), (B). See *NPRM*, 33 FCC Rcd at 7867, para. 27. Section 74.701 defines "Low power TV station" as "[a] station authorized under the provisions of this subpart that may retransmit the programs and signals of a TV broadcast station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service." 47 CFR § 74.701(f). "Television broadcast translator station" is defined as "[a] station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public." *Id.* § 74.701(a).

(i) **Special Displacement Window Eligibility Criteria**

24. The REA provides that “[o]nly stations that are eligible to file and do file an application in the Commission’s Special Displacement Window are eligible to seek reimbursement.”⁶⁷ We adopt our tentative conclusion that, in order to be eligible for reimbursement, a station must be an LPTV/translator station that was eligible to file and did file an application during the Special Displacement Window.⁶⁸ No commenter objects to this proposal. In order to be eligible to file in the Special Displacement Window, the LPTV/translator station must have been “operating” on April 13, 2017 – the date of the release of the *Closing and Channel Reassignment PN*.⁶⁹ For this purpose, a station was “operating” if it either had licensed its authorized construction permit facilities or had an application for a license to cover on file with the Commission on that date.⁷⁰ Further, in order to be eligible to file in the Special Displacement Window, a station must also have been “displaced . . . as a result of the broadcast television spectrum incentive auction.”⁷¹

25. Further, we adopt our tentative conclusion that, to be eligible for reimbursement, a station’s displacement application filed during the Special Displacement Window (or prior to the window with grant of a waiver, or subsequently amended prior to the close of the Settlement Window) must have been granted.⁷² We continue to believe that this additional criterion is essential to ensure the integrity of the reimbursement program and is consistent with Section 511(k)(1), which requires reimbursement of only costs reasonably incurred to “relocate . . . television service from one channel to another channel . . . or otherwise modify [a] facility.”⁷³ We believe that eligibility must be limited to stations with valid displacement construction permits, obtained through the procedural mechanisms associated with the Special Displacement Window, that will permit them to construct the displacement facilities for which

(Continued from previous page) _____

⁶⁶ See *NPRM*, 33 FCC Rcd at 7867, para. 27. NAB generally supports the Commission’s proposals to define LPTV and translator stations eligible for reimbursement. See NAB Comments at 18.

⁶⁷ 47 U.S.C. § 1452(k)(1). See *supra* paras. 8-9 (discussing the Special Displacement Window).

⁶⁸ See *NPRM*, 33 FCC Rcd at 7868, para. 28.

⁶⁹ See *Media Bureau Announces Date by Which LPTV and TV Translator Stations Must Be “Operating” in Order to Participate in Post-Incentive Auction Special Displacement Window*, Public Notice, 31 FCC Rcd 5383, 5384 (MB 2016) (*Operating PN*).

⁷⁰ *Id.*

⁷¹ See *NPRM*, 33 FCC Rcd at 7868, para. 28. In order to be “displaced” for purposes of filing in the Special Displacement Window, the station had to: (1) be subject to displacement by a full power or Class A television station on the repacked television band (channels 2-36) as a result of the incentive auction and repacking process; (2) be licensed on frequencies repurposed for new, flexible use by a 600 MHz Band wireless licensee (channels 38-51); or (3) be licensed on frequencies that will serve as part of the 600 MHz Band guard bands (which includes the duplex gap). See 47 CFR § 73.3700(g)(1); *Incentive Auction R&O*, 29 FCC Rcd at 6836, para. 659.

⁷² See *NPRM*, 33 FCC Rcd at 7868, para. 29. As explained in paragraph 9 *supra*, the Commission provided tools to early displaced LPTV/translator stations to ensure that they would be able to continue to broadcast, including allowing a displaced station to submit a displacement application prior to the opening of the Special Displacement Window and to file for Special Temporary Authority to operate temporarily the facility proposed in the displacement application. See *Displacement Tools PN*. The Commission received 2,164 applications during the Special Displacement Window, including those submitted by early displaced stations. See *supra* para. 8. As of the time of the release of this Order, [1,927] applications have been granted, [XX] have been dismissed, and [XX] remain pending (175 due to mutual exclusivity with another application).

⁷³ 47 U.S.C. § 1452(k)(1). See *Mobile Communications Corp. v. FCC*, 77 F.3d 1399, 1405 (D.C. Cir. 1996) (explaining that the maxim of statutory construction *expressio unius est exclusio alterius* (the mention of one thing implies the exclusion of another) “is simply too thin a reed to support the conclusion that Congress has clearly resolved [an] issue”) (quoting *Texas Rural Legal Aid, Inc. v. Legal Serv. Corp.*, 940 F.2d 685, 694 (D.C. Cir. 1991)).

they receive reimbursement. Otherwise, providing reimbursement to eligible stations whose applications are not granted will result in reimbursement for expenses related to facilities that will not be constructed to “relocate . . . television service from one channel to another channel . . . or otherwise modify [a] facility.”⁷⁴ NAB supports defining eligibility to include stations that were granted displacement construction permits as a result of filing a Special Displacement Window application, arguing that “any other outcome would risk reimbursing stations for facilities that they are ineligible to construct, which would only waste funds.”⁷⁵ No commenter opposes this tentative conclusion.

26. Finally, we adopt our tentative conclusion that if an LPTV/translator station displaced by the repacking process filed in the Special Displacement Window, had its application dismissed, and subsequently files a displacement application when the Media Bureau lifts the freeze on the filing of such applications, it will be eligible for reimbursement under the REA if its later-filed displacement application is granted.⁷⁶ NAB and HC2 support this tentative conclusion, and no one opposes it.⁷⁷ Although they would receive their construction permit through a displacement application that was not filed during the Special Displacement Window, we conclude that these stations meet the threshold eligibility criteria under the REA because such stations were “eligible to file and [did] file an application” in the Special Displacement Window.⁷⁸ We conclude that such stations are affected by the reorganization of broadcast television spectrum in the same way as other displaced LPTV/translator stations. Such stations may request and be granted a waiver of any reimbursement program filing deadlines that occur prior to that station’s filing of the construction permit application. However, for practical purposes, we will limit such stations to only those that have a granted construction permit by whatever final deadline we set for the submission of reimbursement expenses and only to the extent funds remain available for LPTV/translator stations in the Reimbursement Fund.⁷⁹

(ii) “Licensed and Transmitting” Eligibility Criteria

27. We adopt our proposals as set forth in the *NPRM* defining the REA’s mandate that stations must be “licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017” to be eligible to receive reimbursement.⁸⁰ The statute specifies that “the operation of analog and digital companion facilities may be combined” for purposes of the “licensed and transmitting” requirement.⁸¹ As noted above, stations that were licensed or that had an application for a license to cover on file with the

⁷⁴ 47 U.S.C. § 1452(k)(1).

⁷⁵ NAB Comments at 18.

⁷⁶ See *id.* at para. 30. For example, if a displaced station filed an application during the Special Displacement Window that was technically deficient and was not amended to resolve the deficiency within the applicable time period stated in a notice of deficiency letter, then such application would be dismissed. However, the displaced station could file another displacement application after the filing freeze is lifted. We emphasize that the eligibility requirements that were set for the Special Displacement Window continue to apply to these newly-filed applications. See *supra* para. 24 (outlining the eligibility criteria for the Special Displacement Window).

⁷⁷ See NAB Comments at 18; HC2 Reply at 4-5.

⁷⁸ 47 U.S.C. § 1452(k)(1).

⁷⁹ See *NPRM*, 33 FCC Rcd at 7868-69, para. 30.

⁸⁰ See 47 U.S.C. § 1452(k)(5)(A), (B); *NPRM*, 33 FCC Rcd at 7869, para. 31. As noted above, LPTV/translator stations had to be “operating” by April 13, 2017 to be eligible to participate in the Special Displacement Window. See *supra* para. 24.

⁸¹ 47 U.S.C. § 1452(k)(5)(A), (B). See *NPRM*, 33 FCC Rcd at 7869, para. 31, n.103.

Commission on April 13, 2017, will be considered “licensed” for purposes of REA reimbursement eligibility.⁸²

28. With regard to the “transmitting” element, we adopt our proposed definition requiring that LPTV/translator stations must have been operating not less than 2 hours in each day of the week, and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017, in order to be eligible for reimbursement.⁸³ This approach relies on the Commission’s minimum operating schedule rule for commercial full power television broadcast stations.⁸⁴ Given the finite nature of the Reimbursement Fund, it is necessary to give reasonable meaning to the eligibility criteria set forth in the REA, including the requirement that stations must have been “transmitting” during the relevant period. We believe that this requirement reflects the legislative mandate that only “transmitting” stations be eligible to receive reimbursement.

29. HC2 supports imposing minimum operating requirements for stations to meet the “transmitting” component of the reimbursement eligibility criteria, and NAB expresses general agreement with the Commission’s proposals to define LPTV/translator stations eligible for reimbursement.⁸⁵ We agree with HC2 that “it is appropriate for the limited pool of LPTV reimbursement funds to be applied to LPTV stations that have demonstrated their commitment to, and have invested resources in, consistent operations.”⁸⁶ We disagree with the LPTV Coalition that, because there is no minimum daily operating requirement for LPTV/translator stations in the Commission’s rules,⁸⁷ our proposal is inconsistent with actual business practices based on the rules.⁸⁸ We do not believe that the current rules on LPTV/translator station operating requirements should be determinative of the meaning of “transmitting” in the REA for purposes of eligibility for reimbursement. Congress expressly included a “transmitting” requirement in the statute, and we find that the inclusion of this requirement reflects Congress’s intent to ensure that reimbursement funds are placed into the hands of stations that are actually operating and whose viewers stand to lose service as a result of their displacement absent such reimbursement. Further, because there are no minimum operating requirements for LPTV/translator stations in the Commission’s rules,

⁸² See *NPRM*, 33 FCC Rcd at 7869, para. 31. See also *Operating PN*, 31 FCC Rcd at 5384 (interpreting an “operating” LPTV/translator station that is displaced as a result of the incentive auction to mean one that is operating on the date of release of the *Closing and Channel Reassignment PN*).

⁸³ Because a translator station is required to retransmit the signal of a television station, we would expect that most, if not all, translators would meet this requirement. See 47 CFR § 74.701(a) (defining “television broadcast translator station” as “[a] station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude”).

⁸⁴ See 47 CFR § 73.1740; *NPRM*, 33 FCC Rcd at 7869-70, para. 32. That rule provides that commercial full power television stations must “operate” not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week. 47 CFR § 73.1740(a)(2)(ii). The rule defines “operation” to include the period during which the station is operated pursuant to temporary authorization or program tests, as well as during the license period. *Id.* § 73.1740(a)(3). The rule also specifies that “[v]isual transmissions of test patterns, slides, or still pictures accompanied by unrelated aural transmissions may not be counted in computing program service (see § 73.653).” *Id.* § 73.1740(a)(2)(iii).

⁸⁵ See HC2 Reply at 3; NAB Comments at 18.

⁸⁶ See HC2 Reply at 3.

⁸⁷ See *NPRM*, 33 FCC Rcd at 7869, para. 32, n.105 (citing 47 CFR § 74.763(a)). We note that LPTV, TV translator, and TV booster stations are, however, required to notify the Commission within 10 days if causes beyond their control make it impossible to continue operating, and to request Special Temporary Authority if they continue to be unable to operate beyond 30 days. 47 CFR § 74.763(b). Their licenses are also automatically cancelled if they fail to transmit a broadcast signal for any consecutive 12-month period. 47 U.S.C. § 312(g).

⁸⁸ Comments of the LPTV Spectrum Rights Coalition, LLC, at 2 (Sept. 25, 2018) (LPTV Coalition Comments).

Congress could not have intended to use the transmitting rule applicable to LPTV/translator stations to define “transmitting” because that would render the term superfluous.⁸⁹

b. Other Eligible Stations

30. *Early Displaced Stations.* We adopt the *NPRM*’s proposal that LPTV/translator stations that were displaced prior to the opening of the Special Displacement Window but were eligible to file and did file in the Special Displacement Window are eligible for reimbursement under the REA.⁹⁰ Commenters support the proposal, and no commenter opposes it.⁹¹ As noted above, approximately 340 LPTV/translator stations were displaced prior to the Special Displacement Window due to T-Mobile’s decision to commence operations or conduct FAA testing on some of its 600 MHz spectrum prior to the Special Displacement Window.⁹² The Commission provided tools for these early-displaced stations to continue to be able to operate, including allowing the stations to submit displacement applications prior to the opening of the Special Displacement Window with a request for waiver of the current displacement freeze, together with a request for Special Temporary Authority to temporarily operate the facility.⁹³ The Commission also explained that it would treat these applications as if filed on the last day of the Special Displacement Window and process them in accordance with the rules for that window.⁹⁴ As a result, these stations are eligible for reimbursement.

31. *Replacement Translators.* We adopt the *NPRM*’s proposal finding that analog-to-digital replacement translators (DRTs) are eligible for reimbursement pursuant to the REA.⁹⁵ In the *Incentive Auction R&O*, the Commission concluded that DRTs authorized pursuant to Section 74.787(a)(5) of the Commission’s rules that were displaced by the incentive auction and repacking process were eligible to file displacement applications during the Special Displacement Window.⁹⁶ Because DRTs were displaced as a result of the reorganization of broadcast television spectrum, were eligible to file in the Special Displacement Window, and are considered “TV translators” and licensed under the same Part 74 rules as other TV translator stations,⁹⁷ we conclude that displaced DRTs also are eligible for reimbursement

⁸⁹ The National Translator Association (NTA) argues that, because translator stations “are at the mercy of the full-service stations they rebroadcast,” translators should retain eligibility for reimbursement even if their associated primary full power station goes silent and operates for less than nine months prior to April 13, 2017. *See* Comments of the National Translator Association, at 6 (Sept. 21, 2018) (NTA Comments). NTA does not identify any instances where this has occurred. In addition, Commission records do not indicate that there are any such translators that fall into the category described by NTA. Therefore, we decline to consider NTA’s proposal.

⁹⁰ *NPRM*, 33 FCC Rcd at 7870-71, para. 34.

⁹¹ *See* NAB Comments at 18; HC2 Reply at 4.

⁹² *See supra* para. 9.

⁹³ *NPRM*, 33 FCC Rcd at 7863, para. 15 (citing *Displacement Tools PN*, 32 FCC Rcd at 4945, paras. 5-7).

⁹⁴ *See Displacement Tools PN*.

⁹⁵ *See NPRM*, 33 FCC Rcd at 7871, para. 35. There were no specific comments on this particular proposal.

⁹⁶ *See Incentive Auction R&O*, 29 FCC Rcd at 6675, paras. 242-43, and 6834-35, para. 657. Such applications have a processing priority over displacement applications filed by LPTV/translator stations. *Id.*

⁹⁷ *See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, Report and Order, 24 FCC Rcd 5931, 5942, para. 26 (2009) (applying the rules associated with television translator stations to the replacement digital television translator service). *See also Incentive Auction R&O*, 29 FCC Rcd at 6675, para. 243 (“[T]he Commission did not confer an operating status on DRTs that differs from other TV translator stations. On the contrary, it put the licensees of these facilities on notice that DRTs, like other TV translator stations, would be secondary in nature and therefore subject to displacement.”).

pursuant to the REA, provided that they meet the other eligibility requirements. NAB generally supports this proposal, and no commenter opposes it.⁹⁸

32. We adopt the *NPRM*'s tentative conclusion that digital-to-digital replacement translators (DTDRTs) are not eligible for reimbursement under the REA.⁹⁹ In the *LPTV DTV Third R&O*, the Commission established a new DTDRT service to allow eligible full power television stations to recover lost digital service area that could result from the repacking process.¹⁰⁰ The Commission concluded that full power stations could begin to file for DTDRTs beginning with the opening of the Special Displacement Window on April 10, 2018, and ending one year after completion of the incentive auction transition period.¹⁰¹ Although they were eligible to file in the Special Displacement Window, and DTDRTs are similar to DRTs in that they are considered "TV translators" and licensed under the same Part 74 rules as other TV translator stations,¹⁰² we conclude that new DTDRTs are not eligible for reimbursement under the REA because they would not have been "licensed and transmitting" for 9 of the 12 months prior to April 13, 2017, as required by the statute. In addition, even if they were otherwise eligible under the statutory criteria, DTDRTs are newly established facilities and thus are not "relocat[ing] . . . from one channel to another channel" or "modify[ing]" their facilities as required by the statute. NAB generally supports this tentative conclusion, and no commenter opposes it.¹⁰³

33. *Class A Television Licensees.* We adopt our tentative conclusion in the *NPRM* that (1) Class A stations reimbursed from funds under the Spectrum Act or the additional full power/Class A funding in the REA are not eligible for reimbursement from funds dedicated to LPTV/translator reimbursement under the REA; and (2) "a low power station that has been accorded primary status as a Class A television licensee that receives reimbursement under Section 511(k)(1) of the REA" and "that filed in the Special Displacement Window" is not eligible for reimbursement under the Spectrum Act.¹⁰⁴ No commenter disagrees with our interpretation.

34. Further, we find that the group of Class A stations (the "Class A Commenters") that filed for and obtained their Class A licenses after February 22, 2012, but were not eligible to participate in the incentive auction or receive reimbursement under the Spectrum Act and were subsequently displaced as a result of the repacking process but availed themselves of the opportunity to file for a new channel in the first "priority" filing window for repacked stations in 2017, are not eligible for reimbursement from REA funds dedicated to LPTV/translator stations. The Class A Commenters assert that their Class A stations should be eligible for reimbursement under the REA.¹⁰⁵ In the incentive auction proceeding, the Commission declined to protect in the repacking process Class A licensees that did not file an application

⁹⁸ See NAB Comments at 18.

⁹⁹ See *NPRM*, 33 FCC Rcd at 7871, para. 36.

¹⁰⁰ *LPTV DTV Third R&O*, 30 FCC Rcd at 14956-57, para. 65.

¹⁰¹ 47 CFR § 74.787(a)(5)(i); *LPTV DTV Third R&O*, 30 FCC Rcd at 14959, para. 70.

¹⁰² See *LPTV DTV Third R&O*, 30 FCC Rcd at 14962-63, para. 80 (applying the existing rules associated with TV translator stations to DTDRTs).

¹⁰³ See NAB Comments at 18.

¹⁰⁴ *NPRM*, 33 FCC Rcd at 7871-72, para. 37 (citing 47 U.S.C. § 1452(k)(3)(A), (B)).

¹⁰⁵ See Joint Comments of Fifth Street Enterprises, LLC, The Videohouse, Inc., and WMTM, LLC, at 1 (Sept. 25, 2018) (Class A Comments). This includes Fifth Street Enterprises, LLC, licensee of Class A television station WPTG-CD, Pittsburgh, Pennsylvania, The Videohouse, Inc., licensee of Class A television station WOSC-CD, Pittsburgh, Pennsylvania, and WMTM, LLC, licensee of WIAV-CD, Washington, DC (collectively "Class A Commenters"). The current or former licensees of these stations first filed applications to convert their LPTV stations to Class A status in 2013. See FCC File Nos. BLDTA-20130118ABY, BLDTA-20130115ADH, and BLDTA-20131112ARA.

for a Class A authorization until after February 22, 2012, the date of enactment of the Spectrum Act.¹⁰⁶ The Class A Commenters' stations were among the Class A stations that were not protected in the repacking as a result of this decision. In addition, because these stations were not involuntarily reassigned to new channels in the repacking process, they were not eligible for reimbursement under the Spectrum Act.¹⁰⁷ The Class A Commenters acknowledge that the REA establishes certain eligibility criteria in order to claim reimbursement of costs reasonably incurred as a result of the repacking.¹⁰⁸ They contend, however, that their Class A stations meet these eligibility criteria for reimbursement under the REA. We disagree.

35. The REA specifies that a "low power television station" eligible for reimbursement is one "defined in section 74.701 of title 47, Code of Federal Regulations . . . that was licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017."¹⁰⁹ The Class A Commenters' stations have been Class A television stations, which are authorized under Part 73 of our rules,¹¹⁰ since 2013 when they filed license applications to convert their low power television stations to Class A status. At no time during the relevant time period for reimbursement under the REA – April 13, 2016, through April 13, 2017 – were they authorized or operating as low power television or television translator stations under Part 74 of our rules.¹¹¹

36. In addition, the REA provides that "[o]nly stations that are eligible to file and do file an application in the Commission's Special Displacement Window are eligible to seek reimbursement."¹¹² We interpret the statutory term "Special Displacement Window" in accordance with the Commission's use of that term before the passage of the REA because neither the REA nor the Communications Act defines the term, and "Congress' repetition of a well-established term generally implies that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations."¹¹³ Consistent with the Commission's use of the term "Special Displacement Window," we interpret that term as limited to the filing window opening on April 10, 2018 and closing on June 1, 2018 during which operating LPTV/translator stations subject to displacement had an opportunity to file for a new channel.¹¹⁴

¹⁰⁶ See *Incentive Auction R&O*, 29 FCC Rcd at 6670-72, paras. 232-35; *on recon.*, 30 FCC Rcd 6746 (2015); *on further recon.*, 31 FCC Rcd 1367 (2016); *pet. for review dismissed*, D.C. Cir. Nos. 16-1060 & 16-1071.

¹⁰⁷ See *Incentive Auction R&O*, 29 FCC Rcd at 6813-14, paras. 601-02.

¹⁰⁸ Class A Comments at 6-7 (citing 47 U.S.C. § 1452(k)(1)). See *supra* Section III.B.1.a.

¹⁰⁹ 47 U.S.C. § 1452(k)(5)(A), (B).

¹¹⁰ See 47 CFR Part 73.6000 *et seq.*

¹¹¹ While the Class A Commenters argue that the relevant date for determining eligibility for reimbursement under the REA is February 22, 2012, the date of passage of the Spectrum Act which authorized reimbursement of full power and Class A stations that were involuntarily reassigned to a new channel in the Incentive Auction repacking process, see Class A Comments at 7, the REA is clear that LPTV/translator eligibility is determined by a station's operation during the year long period ending April 13, 2017. See 47 U.S.C. § 1452(k)(5)(A), (B).

¹¹² 47 U.S.C. § 1452(k)(1).

¹¹³ *Toyota Motor Mfg., Kentucky, Inc. v. Williams*, 534 U.S. 184, 193-94 (2002), *superseded by statute*, ADA Amendments Act of 2008, Pub.L. 110-325, 122 Stat. 3553 (2008). See also *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 342 (1991) ("In the absence of contrary indication, we assume that when a statute uses . . . a term [of art], Congress intended it to have its established meaning.").

¹¹⁴ See *supra* paras. 8-9 (discussing the Special Displacement Window); *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Report and Order, 32 FCC Rcd 9930, n.370 (2017) (citing the 2017 *LPTV Procedures Public Notice* as establishing "procedures for a Special Displacement Window for operating low power television, analog-to-digital replacement translator, and TV translator stations that are displaced as a result of the broadcast incentive auction and repacking process"). See also *Agenda for the Incentive Auction Task Force and Media Bureau Webinar on the Channel Study Data Released in Advance of the Special Displacement Window*, Public Notice, 33 FCC Rcd 1936 (MB/IATF, Feb. 21, 2018) (announcing a webinar to assist "low-power television,

(continued....)

In contrast, the Class A Commenters filed construction permit applications for new channels during the first “priority” filing window for repacked stations in 2017, and not during the Special Displacement Window that opened in 2018, and thus they fail to satisfy the second prong of the statutory eligibility standard. We disagree that the term “Special Displacement Window” in the REA should be interpreted to include applications filed in the first priority filing window.¹¹⁵ When the Commission declined to exercise its discretion to protect approximately 100 out-of-core Class A eligible LPTV stations that had not filed a Class A application by February 22, 2012, it stated that any LPTV station that filed a Class A application after that date and was displaced in connection with the incentive auction would be provided “with an advance opportunity to locate a new channel.”¹¹⁶ The Commission later specifically identified that “advance opportunity” as the “first filing opportunity” for alternate channels.¹¹⁷ Commission statements evidence an intent that the early filing opportunity for displaced Class A stations be treated separately from the Special Displacement Window for displaced LPTV/translator stations.¹¹⁸ Thus, we disagree that the term “Special Displacement Window” in the REA should be interpreted to include applications filed by the Class A Commenters during the first priority filing window.

37. Class A Commenters also argue that finding them eligible would be consistent with

(Continued from previous page) _____

TV translator stations, and analog-to-digital replacement translators identify potential new channels in the repacked television bands in preparation for the Special Displacement Window”); *Incentive Auction Task Force and Media Bureau Announce Post-Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018*, Public Notice, 33 FCC Rcd 1234 (MB/IATF, Feb. 9, 2018) (announcing a “displacement application filing window for low power television (LPTV), TV translator stations, and analog-to-digital replacement translators (DRT) (referred to collectively as ‘LPTV/translator stations’) that were displaced by the incentive auction and repacking process (Special Displacement Window)”); *Media Bureau Freezes the Filing of Minor Change Applications for LPTV/Translator Stations*, Public Notice, 32 FCC Rcd 10407, para. 2 (MB/IATF, Dec. 20, 2017) (stating that “the Commission has directed the Media Bureau to announce a Special Displacement Window for operating LPTV/translator stations that are displaced by the post-incentive auction repack”); *Freeze on the Filing of Modification Applications to be Lifted Temporarily to Permit Filing of Applications to Expand the Contours of Full Power and Class A Television Stations that Are Not Part of the Post Incentive Auction Repack Process*, Public Notice, 32 FCC Rcd 7643, para. 2 (MB, Oct. 19, 2017) (referring to “the upcoming Special Displacement Window available to LPTV/translator stations displaced by the incentive auction”); *Displacement Tools PN*, 32 FCC Rcd at 4944, para. 3 (referring to “the Special Displacement Window for operating LPTV/translator stations subject to displacement as a result of the incentive auction and repacking process”); *LPTV Procedures Public Notice*, 32 FCC Rcd at 3863, para. 6 (stating that the “Media Bureau will announce a limited window (Special Displacement Window) for LPTV/translator stations subject to displacement as a result of the incentive auction and repacking process to submit displacement applications”).

¹¹⁵ See Class A Comments at 7-11.

¹¹⁶ *Incentive Auction R&O*, 29 FCC Rcd at 6671, para. 234.

¹¹⁷ *Order on Reconsideration*, 31 FCC Rcd at 1382, para. 22. See also *Incentive Auction Task Force and Media Bureau Announce the Opening of the First Priority Filing Window for Eligible Full Power and Class A Television Stations from August 9 Through September 8, 2017*, Public Notice, 32 FCC Rcd 5785, 5785-86, para. 3 (2017).

¹¹⁸ When the Commission adopted Section 73.3700(g) of the rules governing the filing and processing of displacement applications by LPTV/translator stations displaced by the incentive auction, it directed the Media Bureau to “open a special filing window to offer operating LPTV and TV translator stations . . . that are displaced an opportunity to select a new channel,” to be opened “after primary stations relocating to new channels have submitted their construction permit applications and have had an opportunity to request alternate channels or expanded facilities” *Incentive Auction R&O*, 29 FCC Rcd at 6834-35, para. 657. The Commission further “delegate[d] authority to the Media Bureau to announce the terms of the limited displacement window” consistent with the approach outlined in the *Incentive Auction R&O* and the newly adopted rule for LPTV/translator stations displaced as a result of the auction. *Id.* at 6835-36, para. 659. The Incentive Auction Task Force and Media Bureau later issued a series of *Public Notices* providing guidance to LPTV/translator stations regarding the post-incentive auction transition and the Special Displacement Window, making clear that the Special Displacement Window was limited to operating LPTV/translator stations that were displaced. See *supra* note 114.

“Congress’s desire to ensure that all broadcasters are reimbursed for their costs incurred as a result of the post-auction transition.”¹¹⁹ The REA, however, does not require that the Commission reimburse all broadcasters for their costs. The REA specifically limits reimbursement to costs reasonably incurred after January 1, 2017, by LPTV/translator stations that were displaced by the incentive auction, were licensed and operating for nine of the 12 months prior to April 13, 2017, and which filed during the Special Displacement Window. Congress restricted eligibility under the REA to LPTV/translator stations that, as defined by Section 74.701 of the rules, filed displacement applications during the Special Displacement Window—a group that does not include Part 73 Class A television stations that were permitted to file for and obtain new channels outside the Special Displacement Window.

2. Expenses Eligible for Reimbursement

a. Costs Reasonably Incurred

38. The REA provides that the Commission “shall reimburse costs reasonably incurred by a television translator station or low power television station on or after January 1, 2017, in order for such station to relocate its television service from one channel to another channel or otherwise modify its facility as a result of the reorganization of broadcast television spectrum” under the Spectrum Act.¹²⁰ We adopt the *NPRM*’s tentative conclusion that equipment and other costs necessary for an eligible LPTV/translator station to construct the facilities authorized by the grant of the station’s Special Displacement Window application shall be considered costs “reasonably incurred,” subject to the specific restrictions described herein.¹²¹ Commenters generally support our tentative conclusion that equipment and other costs necessary to construct the facilities authorized by grant of a Special Displacement Window application be considered “reasonably incurred” under the REA.¹²²

39. We affirm our belief that the “comparable” facilities reimbursement standard adopted for repacked full power and Class A stations cannot, as a technical matter, be applied to displaced LPTV/translator stations.¹²³ As we explained in the *NPRM*, the post-auction channel assignments for full power and Class A stations specified in the *Closing and Channel Reassignment PN* were made at stations’ existing locations and largely replicated stations’ pre-auction facilities, while displaced LPTV/translator stations may need to move their transmitter and antenna locations as well as change

¹¹⁹ Class A Comments at 3.

¹²⁰ 47 U.S.C. § 1452(k)(l). In the *NPRM*, we noted that the REA limits reimbursement for LPTV/translators to “costs . . . incurred . . . on or after January 1, 2017.” *NPRM*, 33 FCC Rcd at 7874-75, para. 42 (citing 47 U.S.C. § 1452(k)(1)). We adopt our proposed interpretation of this provision to require that an LPTV/translator station have either expended funds or ordered equipment or services for a cost otherwise eligible for reimbursement on or after January 1, 2017, in order to be eligible for reimbursement under the REA. *Id.* (noting also that an invoice dated on or after January 1, 2017, reflecting equipment or services ordered, with a payment due date after the date of the invoice, would be sufficient to permit eligibility for reimbursement). No commenter disagrees with this interpretation. LPTV Coalition points out that expenses incurred in early 2017, before stations were actually displaced, would most likely be limited to engineering expenses incurred by stations that were operating on channels 38 through 50. LPTV Coalition Comments at 4.

¹²¹ *NPRM*, 33 FCC Rcd at 7873-74, paras. 40-41.

¹²² See Class A Comments at 12; LPTV Coalition Comments at 3-4; NAB Comments at 19; HC2 Reply at 5.

¹²³ *NPRM*, 33 FCC Rcd at 7874, para. 41. In implementing the Spectrum Act’s reimbursement provisions for full power and Class A stations reassigned to new channels, the Commission concluded that the Act required that it reimburse costs “that are reasonable to provide facilities comparable to those that a broadcaster . . . had prior to the auction that are reasonably replaced or modified following the auction, as a result of the repacking process, in order to allow the broadcaster to operate on a new channel. . . .” *Incentive Auction R&O*, 29 FCC Rcd at 6822, para. 623. This included reimbursement “for modification or replacement of facilities on the post-auction channel consistent with the technical parameters identified in the *Channel Reassignment PN*.” *Id.*

channels.¹²⁴ In addition, in order to continue providing service to viewers from a new site, displaced stations may need to increase effective radiated power and height which could require the purchase of other equipment not necessarily “comparable” to existing equipment.¹²⁵ Below, we offer additional clarification about the eligibility of specific expenses that were addressed in the record.

40. *Full Service Mask Filters.* We find that the costs for full service mask filters¹²⁶ are reimbursable if they were specified in the station’s Special Displacement Window application as granted by the Commission.¹²⁷ Consistent with our finding that the equipment and other costs necessary to construct the facilities authorized by grant of a Special Displacement Window application will be deemed “reasonably incurred” under the REA,¹²⁸ we also find that displaced stations will be permitted to seek reimbursement for the costs associated with the emission mask specified in their granted construction permit application. We note that even prior to the release of the *NPRM* in August 2018, LPTV/translator stations that filed in the Special Displacement Window had already determined what level of filter to utilize and specified that filter in the station’s Special Displacement Window application. To date, over 94 percent of these applications have already been granted or dismissed. Given that these stations selected their mask filter level without knowing whether this equipment would be reimbursed, we find that their selection of a particular level is unlikely to have been influenced by the availability of reimbursement.

41. Several commenters support reimbursement for the costs of full service mask filters, and only one, NTA, objects.¹²⁹ Although NTA opposes reimbursement for full service mask filters on the

¹²⁴ *NPRM*, 33 FCC Rcd at 7873-74, paras. 40-41.

¹²⁵ *Id.* at 7874, para. 41.

¹²⁶ The Commission’s rules require LPTV/translators to “specify [in a construction permit application] that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: Simple, stringent or full service.” 47 CFR § 74.794(a)(1). Filters decrease out-of-band (*i.e.*, channel) emissions to operations on adjacent channels, and in 2011, the Commission amended its rules to permit LPTV/translator stations to specify full service masks. *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, 10762-63, paras. 68-69 (2011) (*LPTV DTV Second Report and Order*). LPTV/translators had argued that “in areas where frequencies are not available, use of the full power DTV emission mask will enable them to secure a channel . . .”, *id.* at 10763, para. 68, and the Commission agreed that “allowing low power television applicants to specify the use of the full power DTV emission mask [will] accommodate additional LPTV stations and enable more efficient use of the available spectrum.” *Id.* at 10763, para. 69. Full service masks, which are the most efficient, must attenuate emissions no less than 110 dB from more than 6 MHz from the channel edge. 47 CFR § 74.794(a)(2)(iii). Stringent and simple masks must attenuate emissions no less than 76 dB from more than 3 MHz from the channel edge, and 71 dB from more than 6 MHz from the channel edge, respectively. 47 CFR §§ 74.794(a)(2)(i), (ii).

¹²⁷ In the *NPRM*, we asked to what extent the Commission could reimburse LPTV/translator stations for the costs for full service mask filters that could promote spectrum efficiency, even if the station technically could operate at its new location with a stringent or simple mask. *NPRM*, 33 FCC Rcd at 7874, para. 41.

¹²⁸ *See supra* para. 38.

¹²⁹ *See* Comments of Microsoft Corp., at 1 (Sept. 28, 2018) (Microsoft Comments) (contending that the Commission can implement the REA “in a manner that also advances the FCC’s goal of improving spectral efficiency . . . without any new regulatory mandates . . . by finding that the modest cost of purchasing a filter that complies with the Commission’s full service transmission mask for low power broadcasters would be a ‘reasonably incurred’ cost”); LPTV Coalition Comments at 4 (supporting reimbursement for full service filters, stating that these filters are commonly used, are in the public interest, and should not be considered an upgrade); HC2 Reply at 6 (same). *See also* NAB Reply at 7 (noting that full service filters are not necessary as a technical matter for displaced stations to move to new channels, but stating that it has no objection to allowing reimbursement for full service filters if these costs do not limit the Commission’s ability to reimburse broadcasters for other expenses directly related to

(continued....)

grounds that “there is no justification for a station adopting a particular filter beyond its own needs, and receiving government reimbursement [for that expense],”¹³⁰ we find, given the timing of their selection as discussed above, that there was no incentive for a station to specify a level of filter that is not appropriate for its needs. Moreover, we note, that as a practical matter, unless there are adjacent channel facilities in a displaced LPTV/translator station’s vicinity, specifying a full service mask rather than a simple or stringent mask confers no benefit to the station. Use of a full service mask permits a displaced station to choose a channel that would not otherwise be available because a simple or stringent mask would not adequately confine out-of-channel emissions to operations on adjacent channels.¹³¹ For these reasons, we believe that our approach of reimbursing the mask filter that was specified in the displacement applications is a reasonable one.¹³²

42. *Translator Microwave/STL Facilities.* The Mohave County Board of Supervisors (Mohave County) filed comments describing how the repacking of the television band has impacted its network of translators in western Arizona, including modifications to existing terrestrial microwave facilities to allow a displaced translator station to continue to feed its signal on its new channel to another translator station.¹³³ Mohave requests that the Commission reimburse such costs.¹³⁴ We believe that Mohave’s request is best addressed on a case-by-case basis in the context of a request for reimbursement. Further, LPTV Coalition maintains that displaced LPTV stations may need to replace studio transmitter links (STLs) and requests that the Commission reimburse such costs.¹³⁵ We find that there may be some instances where reimbursement for STLs may be appropriate, such as where LPTV stations incur expenses for STL adjustments associated with a change in location resulting from the reorganization of

(Continued from previous page) _____

preserving or restoring service for displaced stations). *But see* Reply Comments of the National Translator Association, at 3 (Oct. 26, 2018) (NTA Reply) (opposing reimbursement for full service mask filters).

¹³⁰ NTA Reply at 3. NTA also disagrees that the additional cost of a full service mask is minimal. *Id.* at 4. We note that the Bureau’s proposed catalog of potential expenses and estimated costs specifies a range for simple filters from \$435 to \$2,550, and for full service masks from \$1,400, to \$12,800. *See Incentive Auction Task Force and Media Bureau Seek Comment on Catalog of Potentially Reimbursable Costs Incurred by Low Power Television, Television Translator and FM Broadcast Stations*, Public Notice, DA 18-1072 (rel. Oct. 22, 2018) (*LPTV/Translator/FM Cost Catalog PN*).

¹³¹ *See supra* note 126. *See also LPTV Digital Second Report and Order*, 26 FCC Rcd at 10762-63, para. 68 (permitting translators to specify a full service mask and concluding that allowing only simple and stringent masks “needlessly limited [LPTV/translator] stations from identifying a workable channel. . .”).

¹³² Although we agree with Microsoft that a full service mask filter may be a “reasonably incurred cost,” we find that such cost is “reasonably incurred” if it is specified in the station’s displacement application and thus is necessary to construct the facilities authorized by grant of a Special Displacement Window application. *See* Microsoft Comments at 6; 47 U.S.C. § 1452(k)(1).

¹³³ *See* Comments of Mohave County Board of Supervisors, at 2-3 (Sept. 25, 2018) (Mohave Comments). Mohave County indicated that 18 of its translators have been displaced and required applications for new channels in the Special Displacement Window. *Id.* at 2. According to Mohave County, while two of its translators at the Oatman and Goat Hill sites have not been displaced, these two translators receive their input channels from translators at the Hayden Peak site, which filed for a new channel in the Special Displacement Window. *Id.* at 2-3. Since co-channels and in most cases, adjacent-channels, cannot be used for both reception of the signal to be retransmitted and retransmission by a translator station, Mohave County proposes to modify its existing microwave facilities to conform to the two new channels that will be used to feed the signals to the Oatman and Goat Hill translators, thereby avoiding interference to other translators. *Id.*

¹³⁴ *Id.* at 1.

¹³⁵ LPTV Coalition Comments at 3 (noting that the costs of STLs “could be a major expense” for “many displaced and rebuilding stations”). *See also* NTA Reply at 3; NAB Comments at 16.

broadcast television spectrum.¹³⁶ The Fund Administrator and the Media Bureau will review the specific circumstances presented by any entity claiming reimbursement for microwave facilities or STLs to determine whether they are eligible for reimbursement under the statute.

43. *Displacement Caused by Modification Filings.* In the *NPRM* we noted that, while the Commission's reorganization of television spectrum under Section 1452(b) of the Spectrum Act was completed with the issuance of the *Closing and Channel Reassignment PN*, the Commission also afforded reassigned stations the opportunity to file applications for alternate channels or expanded facilities during two filing windows that ended on September 15, 2017, and November 2, 2017.¹³⁷ While applications filed by reassigned stations during the two filing windows were not required under Section 1452(b) of the Spectrum Act, they may have resulted in displacement of LPTV/translator stations making those stations eligible to file applications in the Special Displacement Window. Accordingly, we sought comment on whether the REA's requirement that we reimburse costs reasonably incurred "as a result of the reorganization of broadcast television spectrum" extends to include costs incurred by LPTV/translator stations that were displaced solely due to modifications made by full power and Class A facilities as a result of receiving authorizations through these two filing windows.¹³⁸ We agree with NAB that "these filing windows were authorized by the Commission in its incentive auction framework order and plainly constitute part of the repack."¹³⁹ Thus, we conclude that reimbursing LPTV/translator stations for such costs is consistent with the REA.¹⁴⁰ No commenter opposes this proposal.

b. Equipment Upgrades and Reuse of Existing Equipment

44. We adopt the *NPRM*'s proposal with respect to equipment upgrades and reuse of existing equipment. In implementing the Spectrum Act's reimbursement provisions, the Commission concluded

¹³⁶ See *infra* para. 69 (reaching a similar conclusion regarding STLs used by FM stations). However, we distinguish this situation from that in which a station incurs costs to relocate or replace a displaced STL that must cease operating or find new frequencies as a result of the repacking process or the reallocation of the 600 MHz Band. Consistent with our finding in the *Incentive Auction R&O*, such expenses are not reimbursable. See *Incentive Auction R&O*, 29 FCC Rcd at 6695-96, paras. 297-98 and 6822, para. 623 (concluding that the cost to relocate a displaced STL used by full power and Class A stations to other frequencies, as well as the cost of replacing a displaced STL with a different technology, were not reimbursable under the Spectrum Act since "[f]ixed BAS is a secondary service and the Spectrum Act does not provide for any reimbursement through the TV Broadcaster Relocation Fund."). See also *NPRM*, 33 FCC Rcd at 7873-74, para. 40, n.131. One commenter, Michael A. Sleezer, supports reimbursement of expenses incurred by both repacked and non-repacked full power and Class A stations required to relocate their displaced STL facilities to other frequencies as a result of the incentive auction. Comments of Michael A. Sleezer d/b/a CMS Broadcasting Company, at 4, 7 (Sept. 18, 2018) (Sleezer Comments). Mr. Sleezer points to language in a House Committee Report accompanying an earlier version of the REA, wherein "the Committee instruct[ed] the Commission to consider whether stations may be eligible from the Translator and Low Power Station Relocation Fund or the Broadcast Repack Fund for costs reasonably incurred to move or reconfigure studio-to-transmitter links or replace studio-to-transmitter links that are no longer available because they previously operated in the new 600 MHz wireless band." *Id.* at 3-5 (citing House Report 115-587 to H.R. 4986 (115th Congress) at 33). As Mr. Sleezer observes, however, language to this effect was not included in the REA passed by Congress on March 23, 2018. Sleezer Comments at 3. Even if this language had been included in the REA, it only instructed the Commission "to consider" whether stations may be eligible for STL-related costs; it did not direct the Commission "to take administrative action" to permit reimbursement of full-power and Class A television stations for both STL relocation and replacement costs as implied in the Sleezer Comments.

¹³⁷ See *NPRM*, 33 FCC Rcd at 7873, para. 39 & n.130.

¹³⁸ *Id.* at 7873, para. 39.

¹³⁹ NAB Comments at 19.

¹⁴⁰ We note that if an LPTV station is subsequently displaced and forced to permanently discontinue operations as a result of a modification that was filed after the Special Displacement Window, it can still seek reimbursement for any work that was completed up until that point.

that it would not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced, and we proposed to apply the same approach to eligible LPTV/translator stations.¹⁴¹ In addition, consistent with our approach for full power and Class A stations, we proposed a similar requirement that displaced LPTV/translator stations reuse their own equipment to the extent possible, and that displaced LPTV/translator stations seeking reimbursement provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment.¹⁴²

45. Consistent with the approach we have taken when reimbursing full power and Class A stations,¹⁴³ we will not provide reimbursement for optional features beyond those already present in the station's facilities. NAB and HC2 support the proposal not to reimburse stations for new or optional features that are not already present in the equipment being replaced, but also note that "technological advances may mean some features are now standard in equipment and some upgrades may thus be inevitable."¹⁴⁴ We acknowledge that some stations may not be able to replace older, legacy equipment with equipment that is precisely comparable in functionality because of advances in technology. If the cost to replace certain equipment is reasonably incurred so that an LPTV/translator station can construct its granted Special Displacement Window construction permit facility, we will reimburse for the cost of that equipment, recognizing that the equipment may include some improved functionality.

46. With respect to equipment repurposing, consistent with the approach we have taken in reimbursing full power and Class A stations,¹⁴⁵ LPTV/translators should reuse their own equipment to the extent possible and, if seeking reimbursement for new equipment, provide a justification when submitting their cost estimates as to why the cost to purchase new equipment rather than modify their current equipment to conform to their displacement construction permit is "reasonably incurred." LPTV Coalition asserts that "[m]any in the LPTV industry did not reinvest[] into new equipment if they knew they were going to be displaced by the auction [and] many of the transmission systems are in need of replacement and upgrading. Upgrading when they build out their new construction permits should be allowed as much as possible."¹⁴⁶ We disagree. We do not believe that the cost for new equipment can be considered "reasonably incurred" if the station already has a functional piece of equipment it can use rather than replace. We also note that almost 80 percent of LPTV/translator stations transitioned from

¹⁴¹ *NPRM*, 33 FCC Rcd at 7875, para. 43.

¹⁴² *Id.*

¹⁴³ *See Incentive Auction R&O*, 29 FCC Rcd at 6822, para. 624.

¹⁴⁴ NAB Comments at 19; HC2 Comments at 5-6 ("We believe it is appropriate for the Commission to treat LPTVs similarly to full-power and Class A television stations with respect to the prohibition on reimbursement for technical upgrades to encourage reusing equipment whenever possible," but "the Commission should also recognize that advancements in broadcast technology that incorporate previously optional functionality may now be considered standard."). *See also* LPTV Coalition Comments at 5 (stating that "[a]lthough we agree that upgrades for ATSC 3.0 as the sole reason should not be eligible for funding," the Commission should understand that "any new transmitter will probably already have the software/firmware upgrade capabilities to ATSC 3.0, and this feature should not disqualify any purchase from eligibility").

¹⁴⁵ *See Incentive Auction R&O*, 29 FCC Rcd at 6832, para. 651. HC2 asserts that a station "should not be penalized if it cannot repurpose its current equipment because it has been assigned a new frequency and/or geographic location." HC2 Comments at 5. *See also* NTA Comments at 9. We acknowledge that not all equipment will be capable of being repurposed and will carefully consider a station's required justification when seeking reimbursement for new equipment.

¹⁴⁶ LPTV Coalition Comments at 2-3. *See also id.* at 5 ("[T]he FCC needs to understand that a primary impact to LPTV from the lengthy now 6+ year long process of the Incentive Auction, is that many LPTV simply did not upgrade for many years due to the vast uncertainty of the displacement process. . . .").

analog to digital, mostly since the end of the DTV transition in 2009,¹⁴⁷ and we have no basis for concluding that a significant amount of this relatively new digital equipment is in need of replacement.¹⁴⁸

c. Interim Facilities

47. We will consider on a case-by-case basis whether expenses for interim facilities are eligible for reimbursement under the REA for LPTV/translator stations.¹⁴⁹ We acknowledge that in the *Incentive Auction R&O*, the Commission concluded that stations that are assigned a new channel in the incentive auction repacking process may need to use interim facilities to avoid prolonged periods off the air during the transition and decided to reimburse full power and Class A stations for such facilities under the Spectrum Act reimbursement provisions.¹⁵⁰ Because of their lower operating power and the fact that the engineering work that is involved in changing channels is more limited than for full power television stations, we stated in the *NPRM* that we did not believe that LPTV/translator stations will need to construct interim facilities as part of the displacement process and we proposed that such expenses should not be eligible for reimbursement under the REA for LPTV/translator stations.¹⁵¹ However, LPTV Coalition contends that LPTV stations may need to implement interim facilities in certain circumstances.¹⁵² While we think it is unlikely that LPTV stations will need interim facilities, we will consider the facts presented on a case-by-case basis.

d. Lost Revenues

48. The REA, like the 2012 Spectrum Act, explicitly prohibits reimbursement of LPTV/translator stations for “lost revenues.”¹⁵³ As proposed in the *NPRM*, we adopt the same definition we adopted in the *Incentive Auction R&O* and that we apply to full power and Class A stations in the existing reimbursement program for “lost revenues.” Specifically, we define “lost revenues” as those “that a station loses as a direct or ancillary result of the reorganization of broadcast television spectrum, including the repacking process and the reallocation of UHF spectrum in conjunction with the incentive auction.”¹⁵⁴ Under this definition, for example, we will not reimburse a station’s loss of advertising

¹⁴⁷ [insert cite].

¹⁴⁸ LMS indicates that there are over 1,000 LPTV/translators that do not have a digital facility. If any of these stations were displaced and filed a digital displacement application, costs reasonably incurred to construct a new digital facility will be reimbursed.

¹⁴⁹ See *NPRM*, 33 FCC Rcd at 7875, para. 44.

¹⁵⁰ See *Incentive Auction R&O*, 29 FCC Rcd at 6823-24, para. 627.

¹⁵¹ See *NPRM*, 33 FCC Rcd at 7875, para. 44. We note that the maximum ERP for digital VHF and UHF LPTV/translator stations may not exceed 3 kW and 15 kW, respectively. See 47 CFR § 74.735(b). Depending on location and channel number, full power stations on VHF channels can operate with a maximum ERP between 10 and 160 kW while stations operating on UHF channels can operate with a maximum ERP up to 1000 kW. See 47 CFR §§ 73.622(f), (g). Replacing equipment for full power VHF and higher-powered facilities is generally more complex, given the size and weight of the equipment.

¹⁵² See LPTV Coalition Comments at 5 (arguing that some displaced LPTV/translator stations could be operating on special temporary authorizations (STAs) or interim facilities for “potentially years” due to T-Mobile’s deployment of wireless services prior to the expiration of the first phase transition deadlines); *supra* para. 9. We clarify that the type of stations referenced by LPTV Coalition that might need to move twice, or “double build,” as a result of T-Mobile’s deployment are not deemed to be operating on interim facilities. For a discussion of reimbursement for stations that have to move twice as a result of T-Mobile’s deployment of wireless services prior to the expiration of the first phase transition deadline, see *infra* Section III.B.2.f (Stations With Other Sources of Funding).

¹⁵³ See 47 U.S.C. § 1452(k)(2).

¹⁵⁴ *NPRM*, 33 FCC Rcd at 7876, para. 45. This is similar to the definition of “lost revenues” adopted in the *Incentive Auction R&O*, which includes “revenues that a station . . . loses as a direct or ancillary result of the reverse auction or the repacking process.” See *Incentive Auction R&O*, 29 FCC Rcd at 6824-25, para. 630.

revenues while it is off the air during its displacement, or for refunds a station is required to make to advertisers for payments for airtime as a result of being off the air in order to implement a channel change.¹⁵⁵ We agree with LPTV Coalition that it simply is not practical to permit reimbursement for lost revenues and also believe that allowing reimbursement for these expenses would unduly burden the Reimbursement Fund.¹⁵⁶

e. Costs to Resolve Mutually Exclusive Applications

49. We adopt the *NPRM*'s proposals to prohibit reimbursement of costs associated with resolving mutually exclusive applications.¹⁵⁷ The REA provides that “[t]he Commission may not make reimbursement . . . for costs incurred to resolve mutually exclusive applications, including costs incurred in any auction of available channels.”¹⁵⁸ Applications filed during the Special Displacement Window that remain mutually exclusive will be resolved through competitive bidding.¹⁵⁹ We interpret the prohibition against reimbursing for “costs incurred in any auction” to mean that the Commission may not reimburse LPTV/translator station auction bidders under the REA for the costs related to filing an auction application associated with a competitive bidding process, participating in such an auction, and winning bid payments. We also conclude that costs associated with the Settlement Window to resolve mutual exclusivity will not be reimbursed under the REA.¹⁶⁰ Thus, we will not reimburse stations for costs in resolving mutual exclusivity, including engineering studies and preparing application amendments, or the payment of other stations’ expenses as part of a settlement.¹⁶¹ However, we will permit reimbursement for certain engineering costs reasonably incurred in constructing the facilities resulting from settlement and coordination between mutually exclusive applicants. For example, as suggested by LPTV Coalition, the cost for a channel study used to settle a mutually exclusive group may be reimbursed if it can be demonstrated that the same channel study is subsequently used to support an amendment to a displacement application.¹⁶²

f. Stations with Other Sources of Funding

50. We find that stations that receive or have received reimbursement of certain expenses from sources of funding other than the Reimbursement Fund are not eligible to receive reimbursement for those expenses from the Reimbursement Fund. Section 511(k)(3)(A) of the REA specifies that Class A stations that receive reimbursement from “any other source” may not receive reimbursement under the

¹⁵⁵ See *Incentive Auction R&O*, 29 FCC Rcd at 6824-25, para. 630. We note that stations can plan in advance for or mitigate the effects of temporary interruptions in service by, for example, alerting advertisers beforehand, declining to accept advance payments for airtime during relevant post-auction periods, and offering make-ups after the station returns to the air in lieu of refunds of advance payments. See *id.* at n.1763.

¹⁵⁶ LPTV Coalition Comments at 5-6. As LPTV Coalition notes, lost ad revenue, lost channel lease monthly payments, lost commissions from per inquiry spots, barter arrangements, and payments from MVPDs “will be lost by most any LPTV at some time in this process.” *Id.*

¹⁵⁷ See *NPRM*, 33 FCC Rcd at 7876, para. 46.

¹⁵⁸ 47 U.S.C. § 1452(k)(4).

¹⁵⁹ See *LPTV Procedures Public Notice*, 32 FCC Rcd at 3868, para. 16.

¹⁶⁰ *Id.* at 3866, para. 14.

¹⁶¹ Settlements that result in the dismissal of an application are limited to the payment of the dismissing applicant’s expenses per Section 311(c) of the Communications Act of 1934, as amended, and Section 73.3525 of the Commission’s rules. See 47 U.S.C. § 309(j)(6)(E); 47 CFR § 73.3525(a)(3).

¹⁶² See LPTV Coalition Comments at 6. Given our decision declining to adopt NTA’s “fast track” approach to reimbursement, see *infra* Section III.D.1, we need not consider NTA’s proposal that we not apply “fast track” processing to costs to resolve mutually exclusive applications. See NTA Comments at 8.

REA.¹⁶³ While the REA did not explicitly set forth an identical requirement for LPTV/translator stations, we believe that the statute as reasonably interpreted extends a similar prohibition to LPTV/translator stations. The REA requires the Commission to “reimburse costs reasonably incurred.”¹⁶⁴ Congress did not define these terms in the REA, the Spectrum Act, or the Act. The dictionary definition of the term “reimburse” is to “pay back to someone: repay”; “to make restoration or payment of an equivalent to.”¹⁶⁵ For stations that are reimbursed by a third party, there is nothing for the Commission to “pay back” or for which to “make restoration” because the stations have already been made whole.¹⁶⁶ Indeed, as a practical matter, monies from the Reimbursement Fund would be used to reimburse T-Mobile, which does not qualify as an entity eligible for reimbursement under the REA.

51. NAB and Class A Commenters agree that stations that have already received, or will receive, funding from other sources should not be eligible for reimbursement.¹⁶⁷ T-Mobile disagrees, arguing that “a cost that is reimbursed by another source of funding is still a ‘cost . . . incurred’ by the station under the statute, given that a station must first *incur* such costs before seeking reimbursements from third parties.”¹⁶⁸ LPTV Coalition likewise contends that the Commission should reimburse stations pursuant to the REA even if they have received funding from other sources.¹⁶⁹ We disagree. Those commenters’ position ignores the fact that the station will be made whole for certain expenditures through reimbursement from another source of funding. Such an approach could potentially result in windfall payments to LPTV/translator stations above the costs they reasonably incurred to relocate from one channel to another or otherwise modify their facilities, and at a minimum would require the Commission to investigate the private contractual or other relationships between parties to assure that duplicate payments are not made. We believe it far more likely that Congress did not intend to permit such obvious windfalls.¹⁷⁰ In any case, we find it axiomatic that sound administration of federal funds requires that no

¹⁶³ 47 U.S.C. § 1452(k)(3)(A).

¹⁶⁴ 47 U.S.C. § 1452(k)(1), (l)(1)(A).

¹⁶⁵ Merriam-Webster, Definition of Reimburse, <https://www.merriam-webster.com/dictionary/reimburse>.

¹⁶⁶ In addition, the dictionary definition of the term “cost” is “the amount or equivalent paid or charged for something”; “the outlay or expenditure (as of effort or sacrifice) made to achieve an object”; the “loss or penalty incurred especially in gaining something.” Merriam-Webster, Definition of Cost, <https://www.merriam-webster.com/dictionary/cost>. The dictionary definition of the term “incur” is “to become liable or subject to.” Merriam-Webster, Definition of Incur, <https://www.merriam-webster.com/dictionary/incur>. When a station is reimbursed by a third party, it is not liable for an “outlay or expenditure” or “loss or penalty.” In addition, it is the third party, not the station, that is liable for “pa[y]ing] . . . for something.”

¹⁶⁷ NAB Comments at 19; Class A Comments at 12.

¹⁶⁸ Comments of T-Mobile USA, Inc., at 5 (Sept. 26, 2018) (T-Mobile Comments). T-Mobile also argues that, if a cost reimbursed by another source of funding is not considered a cost incurred by the station, then Congress’s specific prohibition on duplicative payments would be superfluous. *Id.* We disagree. We do not interpret Congress’s emphasis that certain duplicative payments are prohibited to mean that reimbursed costs are “costs . . . incurred.” See *Shook v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 132 F.3d 775, 782 (D.C. Cir. 1998) (“Sometimes Congress drafts statutory provisions that appear preclusive of other unmentioned possibilities—just as it sometimes drafts provisions that appear duplicative of others—simply, in Macbeth’s words, ‘to make assurance double sure.’ That is, Congress means to clarify what might be doubtful—that the mentioned item is covered—without meaning to exclude the unmentioned ones.”). See also *Mobile Communications Corp. v. FCC*, 77 F.3d 1399, 1405 (D.C. Cir. 1996) (explaining that the maxim of statutory construction *expressio unius est exclusio alterius* (the mention of one thing implies the exclusion of another) “‘is simply too thin a reed to support the conclusion that Congress has clearly resolved [an] issue’”) (quoting *Texas Rural Legal Aid, Inc. v. Legal Serv. Corp.*, 940 F.2d 685, 694 (D.C. Cir. 1991)).

¹⁶⁹ LPTV Coalition Comments at 6-7.

¹⁷⁰ T-Mobile contends that the average relocation cost for an LPTV/translator station is between \$40,000 and \$45,000, and thus the total reimbursement costs will be well below the \$150 million provided by Congress. Letter

(continued....)

expense is eligible for reimbursement if the same expense is funded from another source. Such a conclusion could subject the Reimbursement Fund to waste, fraud, and abuse.

52. Consistent with our holding above that the REA prohibits duplicative payments, we will not reimburse displaced stations for costs for which they have already received reimbursement funding from T-Mobile's Supplemental Reimbursement Program or its translator reimbursement grant program administered through PBS. In the *NPRM*, we sought comment on whether displaced LPTV/translator stations that have received reimbursement from T-Mobile for a particular expense should receive reimbursement for that expense pursuant to Section 511(k)(1).¹⁷¹ In its comments, T-Mobile argues that stations that receive funding from third parties should be eligible for reimbursement under the REA after making a certification to prevent the double recovery of their relocation expenses.¹⁷² We reject this argument and agree with NAB that the Commission "should not effectively reimburse" third parties that already made a voluntary commitment to fund the relocation of displaced LPTV/translator stations before they were aware that any federal source of funding would be available through the REA.¹⁷³ The Commission should not, after those business arrangements are established, stand as an insurer of T-Mobile's commitment. There is no question that entities that are not displaced stations, such as T-Mobile and PBS, are not eligible to receive direct reimbursement from the Reimbursement Fund because they do not meet the eligibility requirements under the REA.¹⁷⁴ While T-Mobile proposes that stations certify that they will use their REA reimbursement proceeds to promptly reimburse third parties such as T-Mobile and PBS, we do not believe that such certification would satisfy the Commission's obligation to ensure that the limited fund is administered only to reimburse costs that are not otherwise subject to

(Continued from previous page) _____

from Steven B. Sharkey, Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-214 et al., at 2 (filed Jan. 24, 2019). T-Mobile argues that if the Commission is concerned that \$150 million is not sufficient, it could defer reimbursing stations that received funding from third parties until all other eligible stations have been reimbursed. *Id.* However, this does not address the concern set forth above that such an approach can result in a windfall to LPTV/translator stations above their costs reasonably incurred and subject the Reimbursement Fund to waste, fraud, and abuse.

¹⁷¹ *NPRM*, 33 FCC Rcd at 7876-77, para. 47. It is our understanding from public reports and comments and *ex partes* filed at the Commission that there are at least two groups of stations that may or have received funding from T-Mobile, either directly or indirectly. As mentioned above, T-Mobile began deploying some of its 600 MHz spectrum in 2017, which displaced approximately 340 LPTV/translators prior to the opening of the Special Displacement Window. The Commission allowed those stations to file early displacement applications and operate their proposed displacement facilities pursuant to an STA. T-Mobile agreed to reimburse stations for costs reasonably incurred if the permanent channel assignment they receive in the Special Displacement Window is different from their STA facility – in other words if the stations had to move twice – from a Supplemental Reimbursement Program administered by T-Mobile. *Id.* at 7863, 7876-77, paras. 15, 47 & n.156. Second, on June 26, 2017, T-Mobile awarded a grant to PBS to provide funding to enable displaced public television translators, including translators not licensed to PBS stations but that carry public television content, to move to new displacement facilities. *See* PBS May 30, 2018 *Ex Parte*, Attach. PBS is administering this reimbursement program. *See id.*

¹⁷² T-Mobile Comments at 2. T-Mobile proposes that "LPTV stations that have not received equipment or financing in advance, even if the equipment or financing is pledged from a third party, would simply need to self-certify at the time they request reimbursement from the Reimbursement Fund that the eligible expense was not already reimbursed from a third party or vendor." *Id.* at 3. With respect to LPTV/translator stations that have already received advanced equipment or financial support from third parties, these stations "would certify that within a reasonable period of time – for example, 30 days – after receiving funding from the Fund they will reimburse the equipment vendors or return those funds." *Id.*

¹⁷³ NAB Comments at 19-20. *See also* Reply Comments of the National Association of Broadcasters, at 6-7 (Oct. 26, 2018) (NAB Reply). *But see* Reply Comments of T-Mobile USA, Inc., at 3 (Oct. 26, 2018) (T-Mobile Reply) (arguing that NAB's concern that there may be insufficient funds to reimburse all eligible stations is "speculative").

¹⁷⁴ *See supra* Section III.B.1.

reimbursement from other sources. Furthermore, T-Mobile does not propose a mechanism for the Commission to audit and ensure that the REA reimbursement funding is in fact transferred between these private parties. We believe that such a certification could require the Commission staff to act as an auditor for the two reimbursement programs established by T-Mobile at both risk and expense to the government. The Commission should not insert itself into such private commercial transactions absent clear statutory direction that we do not find in the REA. We find, however, that if T-Mobile's reimbursement is less than the amount for which the station would be eligible under the reimbursement rules and procedures adopted in this proceeding, the station may request reimbursement from the Reimbursement Fund for any shortfall.

53. We require displaced stations to certify on their reimbursement submissions that they have not received nor do they expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA, and we also require stations to first seek reimbursement from other sources before seeking reimbursement of any potential shortfall under the REA.¹⁷⁵ This includes but is not limited to sources of funding such as insurance or existing state grants.¹⁷⁶ This is consistent with the approach taken in connection with reimbursement of full power and Class A stations, where, for example, we have required stations to first seek reimbursement from an insurer before seeking reimbursement from the Commission. NTA asks that the Commission clarify that it will reimburse state or municipal government-owned translators where the reimbursement funds will be returned to the governmental entity.¹⁷⁷ According to NTA, "Congress did not intend to penalize states and local governments that maintain translators," and reimbursing these government owned translators should not be considered a duplicative payment.¹⁷⁸ We agree with NTA and clarify that our decision on duplicative payments does not implicate the eligibility of translators that are licensed to governmental entities. Such translators are eligible for reimbursement, just as any other eligible translator station that files in the Special Displacement Window and incurs costs due to its displacement.

C. FM Broadcast Stations – Eligibility and Expenses

54. Congress in the REA allocated funds for the purpose of reimbursing costs "reasonably incurred by an FM broadcast station for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum."¹⁷⁹ In this section we adopt rules related to eligibility and expenses under the REA provisions for reimbursement of FM stations.¹⁸⁰

1. Stations Eligible for Reimbursement

55. We find that pursuant to the REA, FM stations are eligible for reimbursement from the Reimbursement Fund if they satisfy the criteria described below.

¹⁷⁵ *NPRM*, 33 FCC Rcd at 7877, para. 49.

¹⁷⁶ We clarify that we are not requiring stations to initiate fundraising activities, but to avail themselves of existing sources of funding.

¹⁷⁷ NTA Comments at 7.

¹⁷⁸ *Id.*

¹⁷⁹ 47 U.S.C. § 1452(l)(1)(A).

¹⁸⁰ Only three parties filed comments specifically addressing FM station reimbursement: the National Association of Broadcasters (NAB), which filed comments and reply comments; National Public Radio (NPR), which filed comments; and REC Networks, Inc. (REC), which filed comments limited to the issue of whether the definition of "FM broadcast stations" includes low-power FM (LPFM) and Class D FM stations.

a. FM Broadcast Stations and FM Translator Stations

56. We adopt the tentative conclusion in the *NPRM* that “FM broadcast stations” includes both full-service FM stations and FM translator stations.¹⁸¹ NAB supports this tentative conclusion,¹⁸² and no commenter disputes it. Congress defined “FM broadcast stations” in the REA by referencing Sections 73.310 and 74.1201 of the Commission’s rules.¹⁸³ Section 73.310 defines an FM broadcast station as “[a] station employing frequency modulation in the FM broadcast band and licensed primarily for the transmission of radiotelephone emissions intended to be received by the general public.”¹⁸⁴ Additionally, Congress specifically stated that FM translator stations as defined in Section 74.1201 of the Commission’s rules would be eligible for reimbursement.¹⁸⁵

57. We also conclude that low-power FM (LPFM) stations qualify for reimbursement. In the *NPRM*, we sought comment on whether LPFM stations, which were not specifically referenced in the REA, should nonetheless be considered “FM broadcast stations” for reimbursement purposes.¹⁸⁶ We noted that such stations meet the criteria for “FM broadcast station” set forth in Section 73.310 of the rules and are licensed under Part 73 of the rules like full-service FM stations.¹⁸⁷ Both NAB and REC are in favor of reimbursement eligibility for LPFM stations, and no commenter opposes this interpretation.¹⁸⁸ REC argues that even though LPFM stations are secondary services, because they originate programming, have Emergency Alert System equipment, and hold responsibilities as broadcasters, they should be considered FM broadcast stations for reimbursement purposes.¹⁸⁹ For all these reasons we conclude that LPFM stations qualify for reimbursement.

b. Licensed and Transmitting at Time of Repack

58. For LPTV/translator stations, as noted above, the REA defines eligibility by reference to licensing and transmitting prior to a specific date (April 13, 2017). It includes no such specific reference

¹⁸¹ *NPRM*, 33 FCC Rcd at 7878, para. 51. In the REA, Congress did not differentiate between FM stations providing commercial programming and those broadcasting NCE programming. NCE FM stations are licensed only to nonprofit educational organizations upon showing that the station will be used for the advancement of an educational program. 47 CFR § 73.503(a). Both commercial and NCE stations provide programming meeting the needs of their communities of license. We therefore conclude that both commercial and NCE FM full-service and translator stations shall be counted as FM stations for purposes of the REA. *See NPRM*, 33 FCC Rcd at 7878, para. 51, n.162.

¹⁸² NAB Comments at 9.

¹⁸³ 47 U.S.C. § 1452(l)(2); 47 CFR § 73.310.

¹⁸⁴ 47 CFR § 73.310(a).

¹⁸⁵ 47 U.S.C. § 1452(l)(2). FM translator stations are defined in Section 74.1201 of the rules as “[a] station in the broadcasting service operated for the purpose of retransmitting the signals of an AM or FM radio broadcast station or another FM broadcast translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude, in order to provide radio broadcast service to the general public.” 47 CFR § 74.1201(a).

¹⁸⁶ *NPRM*, 33 FCC Rcd at 7878, para. 51.

¹⁸⁷ *Id.* Additionally, 47 CFR § 73.310 and its definitions are incorporated in the Part 73 LPFM rules. *See* 47 CFR § 73.801.

¹⁸⁸ NAB Comments at 9; Comments of REC Networks, at 2 (Sept. 26, 2018) (REC Comments).

¹⁸⁹ REC Comments at 2. REC also argues that Class D FM stations should be eligible for reimbursement. *Id.* Class D FM stations are 10-watt stations that were typically licensed to small communities and high schools. There are 126 such Class D FM stations; they are no longer licensed in the continental United States but continue to be licensed on occasion to smaller communities in Alaska. Because Class D FM stations are considered full-service FM stations, we concur with REC that, in the unlikely event that such a station is affected by repacking, it should be able to seek reimbursement.

in addressing FM stations. We adopt our tentative conclusion that to be eligible for reimbursement under the REA, an FM station must have been licensed and transmitting on this same date, using facilities impacted by a repacked television station.¹⁹⁰ We also adopt our tentative conclusion that only those costs associated with the impact at that location will be considered eligible.¹⁹¹ We believe it is necessary and appropriate to impose some reasonable standards on the eligibility of stations to be reimbursed from the Reimbursement Fund, and we conclude that we should place the same limitation on FM stations that is applied to LPTV/translator stations.¹⁹² As explained in the *NPRM*, we chose this date because it is the date on which reverse auction winners and the television stations subject to the repack were identified in the *Closing and Channel Reassignment PN*, and we tentatively concluded that any FM station that began operating on a facility or at a location impacted by a repacked television station after that date voluntarily assumed the risk of any potential disruption of service to the FM station.¹⁹³ NAB, the only commenter to address this issue, agrees with this rationale and supports using a “licensed and transmitting on April 13, 2017” standard for eligibility of FM stations.¹⁹⁴ Thus, we adopt this tentative conclusion and find that any costs incurred by FM stations that undertook such a risk are not “reasonably incurred” under the statutory standard and therefore are not eligible for reimbursement under the REA.¹⁹⁵

59. We affirm our conclusion that there must be a causal link between the facilities for which reimbursement is sought and repack-related work to a full power or Class A television station. The REA requires reimbursement “to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. § 1452(b)].”¹⁹⁶ In the *NPRM*, we tentatively concluded that an FM station can experience a service disruption “as a result of the reorganization of broadcast television spectrum under [47 U.S.C. § 1452(b)]” either because a full power or Class A television station has been reassigned to a new channel in the *Closing and Channel Reassignment PN*, or because a full power or Class A television station relinquished spectrum usage rights in the reverse auction.¹⁹⁷ In either case, modification of the full power or Class A television station may impact the FM station. We interpreted the statutory language to require a causal link between the facilities being reimbursed and the activities associated with the station relinquishing spectrum rights or the repacked full power or Class A television station, and likewise interpreted this provision to mean that only the FM broadcast facilities directly impacted by the repacked television station would be eligible for reimbursement.¹⁹⁸ We believe that this interpretation of the REA is consistent with Congress’s provision of limited funds for FM facility reimbursement. NAB agrees that the clear intent of the REA was to require a causal link between work

¹⁹⁰ *NPRM*, 33 FCC Rcd at 7878-79, para. 52. See *Mobile Communications Corp. v. FCC*, 77 F.3d 1399, 1405 (D.C. Cir. 1996) (explaining that the maxim of statutory construction *expressio unius est exclusio alterius* (the mention of one thing implies the exclusion of another) “‘is simply too thin a reed to support the conclusion that Congress has clearly resolved [an] issue’”) (quoting *Texas Rural Legal Aid, Inc. v. Legal Serv. Corp.*, 940 F.2d 685, 694 (D.C. Cir. 1991)). Consistent with our finding with respect to LPTV/translator stations in paragraph 27 *supra*, FM stations that had an application for a license to cover on file with the Commission on April 13, 2017, will be considered “licensed” for purposes of reimbursement eligibility.

¹⁹¹ *Id.*

¹⁹² *Id.* The REA seeks to reimburse costs “reasonably incurred” by FM stations to “reasonably minimize disruption of service” as a result of the reorganization of broadcast television spectrum, but as noted above it provides no additional specificity as to the eligibility of FM stations for reimbursement.

¹⁹³ *Id.*

¹⁹⁴ NAB Comments at 10.

¹⁹⁵ *NPRM*, 33 FCC Rcd at 7878-79, para. 52.

¹⁹⁶ *Id.*

¹⁹⁷ *NPRM*, 33 FCC Rcd at 7879, para. 52.

¹⁹⁸ *Id.*

done because of repacking or channel relinquishment and expenses for which an FM station seeks reimbursement,¹⁹⁹ and no commenter disputes our interpretation.

60. Consistent with our finding with respect to LPTV/translator stations,²⁰⁰ we conclude that reimbursing FM stations for costs incurred due to television station modifications resulting from authorizations received through the alternate channel/expanded facilities filing windows is consistent with the REA. We sought comment on whether the REA's requirement that we reimburse costs incurred by FM stations to "reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. § 1452(b)]" extends to costs incurred by FM stations solely due to modifications made by full power and Class A facilities as a result of receiving authorizations through the two alternate channel/expanded facilities filing windows.²⁰¹ NAB urges the Commission to permit reimbursement under the REA for work done because of modifications as a result of receiving authorizations through the alternate channel/expanded facilities filing windows.²⁰² We agree with NAB that "these filing windows, authorized by the Commission in its incentive auction framework order, plainly constitute part of the repack."²⁰³

c. Categories of Eligible FM Stations

61. In the *NPRM*, we proposed three categories of stations that we anticipate will encounter any disruption of service as a result of the reorganization of broadcast television spectrum such that they would be eligible for reimbursement under the REA. We adopt our proposal to assign affected FM stations to the three categories of service disruption set forth below, and to allow reimbursement to FM stations in these three categories:

- Category (1) – Stations Forced to Relocate Permanently. We proposed that this eligibility category include FM stations required either to vacate their towers, and which therefore incur costs for alternative facilities at a different site, or to relocate permanently their antennas to a different level of their current towers.
- Category (2) – Stations Forced to Temporarily Dismantle Equipment or Make Other Changes Not Requiring Commission Approval. We proposed that this eligibility category include FM stations required temporarily to dismount or disassemble equipment, most likely antennas, in order to accommodate work on a television antenna or a tower.²⁰⁴ We also proposed that this category include FM stations required to physically move their transmitter to accommodate new television transmission equipment, and also include other types of necessary equipment modifications that do not require Commission approval.²⁰⁵
- Category (3) – Stations Forced to Temporarily Reduce Power or Cease Transmission on Their Primary Facility to Accommodate Antenna or Tower Modifications. We proposed that

¹⁹⁹ See NAB Comments at 9.

²⁰⁰ See *supra* para. 43.

²⁰¹ *NPRM*, 33 FCC Rcd at 7879, para. 52. For a more detailed description of the alternate channel/expanded facilities filing windows, see *supra* para. 43.

²⁰² NAB Comments at 10.

²⁰³ *Id.*

²⁰⁴ For example, an FM station might be forced to remove its antenna temporarily to make room for a gin pole (a temporary pole used to hoist antenna sections and components) being used to modify or remove a television antenna, or to enable work to upgrade a tower for heavier television antennas or greater wind loading.

²⁰⁵ For example, an FM station might need to replace or modify a directional antenna whose directional pattern is changed due to tower modifications or additional coaxial cables or wave guides running behind the antenna, in order to conform to its licensed signal pattern.

this eligibility category would include those FM stations that are required to reduce power or go off the air to protect workers making modifications to television facilities on a tower from RF exposure. FM stations in other eligibility categories could also qualify as Category (3) stations if they otherwise meet the reimbursement requirements.²⁰⁶

62. As noted in the *NPRM*, we believe that reimbursing FM stations for the types of service disruptions described in these categories is consistent with our statutory mandate to reimburse FM stations for “costs . . . for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum.”²⁰⁷ NAB “agrees that these three categories should cover the universe of affected stations,” and no commenter disagrees with the categorization of FM stations proposed above or suggests additional categories.²⁰⁸

63. We also adopt our tentative conclusion that FM stations will be required to certify that they have not received or do not expect to receive payment from other sources for interim facilities constructed or leased as a result of repack-related service disruptions.²⁰⁹ Section 511(l)(1)(C) of the REA specifies that an FM station that has received payment for “interim facilities” from either a television station that was reimbursed under the Spectrum Act or “from any other source” may not receive “any reimbursements” under the REA.²¹⁰ Based on the statutory language, we conclude that any FM station that has received such payment for “interim facilities,” is ineligible for any reimbursement under the REA. Commenters agree with these conclusions.²¹¹ As discussed above, we believe the government should not act as an insurer with regard to voluntary reimbursements made by third parties.²¹²

2. Expenses Eligible for Reimbursement

64. In the *NPRM*, we observed that the REA requires us to provide reimbursement for “costs reasonably incurred by an FM broadcast station for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum.”²¹³ We tentatively concluded that tying reimbursement to a requirement for some level of disruption of service to eligible FM stations is reasonable, and noted that the public interest requires that we seek to maximize the

²⁰⁶ *NPRM*, 33 FCC Rcd at 7879-80, para. 53. In the *NPRM*, we stated that we anticipate that there will be a very small number of FM stations in Category (1) and Category (2), and that, while Category (3) will be the most numerous of eligible FM stations, it will still likely include only a limited number of FM stations. *See id.* at 7880, para. 53 & n.174. NAB agrees “that the first two categories will likely include relatively few stations while the third category will be the largest.” NAB Comments at 10-11. *See also* NPR Comments at 4 (indicating that, based on an informal station survey conducted by NPR, at least three public radio stations must move their FM antennas to new towers; at least two public radio stations must relocate their antennas on the same tower; at least a dozen public radio stations (including some in the first two groups) must temporarily dismantle equipment or make other temporary or permanent equipment changes due to the repack; and several dozen more must temporarily reduce power and signal coverage or go off air to accommodate repack work). We note, however, that these anecdotal examples do not provide a basis for making a definitive estimate of how many stations will be affected or the level of expense that might be requested of the Reimbursement Fund, either by category or in the aggregate.

²⁰⁷ 47 U.S.C. § 1452(l)(1)(A).

²⁰⁸ *See* NAB Comments at 11. As discussed below, commenters focused mainly on the proposed graduated priority approach for reimbursement within Category (3) stations. *See infra* para. 73.

²⁰⁹ *NPRM*, 33 FCC Rcd at 7881, para. 55. *See also infra* para. 87 (discussing other sources of funding and related certification requirements for FM stations generally).

²¹⁰ 47 U.S.C. § 1452(l)(1)(C).

²¹¹ NAB supports the proposal to require certification that the station has not been reimbursed from other sources. NAB Comments at 18.

²¹² *See supra* para. 52.

²¹³ *NPRM*, 33 FCC Rcd at 7881, para. 56 (citing 47 U.S.C. § 1452(l)(1)(A)).

limited funds available for all facilities to address the most significant service disruptions to ensure that the most needed facilities are fully funded.²¹⁴ We thus sought comment on how to define what costs are “reasonably incurred” and on how to interpret the phrase “to reasonably minimize disruption of service” as contemplated by the REA, and proposed an approach for prioritization of reimbursement to FM stations.²¹⁵ Below we describe expenses that we find are eligible for reimbursement pursuant to the REA.

a. Costs Reasonably Incurred

65. First, as proposed in the *NPRM*, we find that eligible costs for Category (1) and Category (2) stations are similar to eligible costs for full power and Class A stations in the repack, and therefore should be reimbursed in a similar manner.²¹⁶ No commenter took issue with this proposal, and we therefore adopt it as discussed in greater detail below. As a result, if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (1) and Category (2) stations should be eligible for reimbursement for up to 100 percent of eligible costs similar to the reimbursements provided to impacted full power and Class A stations.

66. Second, we decline to adopt our proposal that reimbursement for Category (3) stations should be subject to a graduated priority system based on the significance and duration of service disruption.²¹⁷ No commenter supports this proposal. Instead, as discussed in more detail below, we conclude that if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (3) stations that experience more than a *de minimis* level of service disruption will be eligible for reimbursement for up to 100 percent of eligible costs.²¹⁸

(i) Replacing or Restoring Facilities – Category (1) and (2) Stations

67. *Category (1) Stations.* We conclude that Category (1) stations are eligible for reimbursement of up to 100 percent of eligible costs. In the *NPRM*, we stated our belief that reimbursement of costs associated with Category (1) FM stations should be based on a standard similar to that developed for the existing reimbursement program for full power and Class A stations because the nature of the relocation of the FM station and types of costs incurred are similar.²¹⁹ As such, we noted that the goal for Category (1) stations should be to rebuild their facilities to reasonably replicate the station’s coverage area and population served, similar to the standard applicable to full power and Class A stations.²²⁰ We also stated that Category (1) stations should be eligible for reimbursement for costs similar to full power and Class A stations to move and reconstruct the current facilities at a new site or tower location, including costs of equipment, professional services such as engineering, and tower and construction work.²²¹ With no opposition from commenters, we thus affirm our conclusions and find that, if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (1)

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at 7881-82, paras. 58-60.

²¹⁷ *Id.* at 7883-85, paras. 61-67.

²¹⁸ *See infra* para. 80 (defining *de minimis* service disruption).

²¹⁹ *NPRM*, 33 FCC Rcd at 7881, para. 58 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6622, paras. 120-21 (replication of service), and 6812-30, paras. 598-644 (reimbursement)). The existing reimbursement program for full power and Class A stations seeks to reimburse costs reasonably incurred for stations to move their facilities to a new channel assigned as a result of the incentive auction repacking process, using reasonable efforts to preserve each station’s coverage area and population served. *Id.*

²²⁰ *Id.* (citing *Incentive Auction R&O*, 29 FCC Rcd at 6622, paras 120-21).

²²¹ *Id.* (citing *Incentive Auction R&O*, 29 FCC Rcd at 6812-30, paras. 598-644).

stations are eligible for reimbursement for up to 100 percent of eligible costs similar to the reimbursements provided to impacted full power and Class A stations.²²² We continue to believe that only a very small number of stations are likely to be included in this category,²²³ and therefore we do not believe the reimbursement of these stations is likely to constitute a significant portion of payments to FM stations from the Reimbursement Fund.²²⁴

68. We further adopt our proposals with respect to specific types of reimbursable equipment costs for Category (1) stations. Specifically, we find that examples of reimbursable equipment costs that could be reasonably incurred include transmitters, antennas, coaxial cable or wave guides, and associated equipment needed to reasonably replicate the service being lost.²²⁵ We also find that existing equipment should be reused as appropriate and that, to the extent that existing equipment cannot be reused, new equipment be reimbursable if needed to reasonably replicate service and coverage area.²²⁶ Additionally, we find that the costs of engineering to determine what technical facilities are needed to replace existing service at a new site should be considered reimbursable expenses, as well as transportation costs of physically moving equipment to a new site or new location on a tower and any engineering costs associated with the move.²²⁷ Finally, we adopt our proposal not to reimburse FM stations for equipment that is used solely to emit transmissions that are not “radiotelephone emissions intended to be received by the general public,” such as Traffic Message Channels and digital metadata.²²⁸ No commenter disagrees with these proposals.

69. We find that expenses related to STLs are eligible for reimbursement in certain circumstances. In the *NPRM*, we initially proposed not to reimburse FM stations for the costs of STLs and related equipment.²²⁹ NAB urges us to permit the reimbursement of STL expenses in light of the fact that, unlike television stations, FM stations will not change channels but will, in some cases, be forced to change locations, necessitating re-adjustment of STL facilities.²³⁰ Although we conclude that stations utilizing microwave STL links should ordinarily be able to re-use their transmission and reception equipment and antennas, we find that there may be certain limited instances where reimbursement may be appropriate, such as where FM stations incur expenses due to a change in the FM station’s antenna location. We direct the Media Bureau to reimburse reasonably incurred expenses on a showing that existing STL facilities could not be adapted for use at the new tower site and that their unsuitability is due to the specific relocation of the antenna and not the repack generally. We distinguish this situation from the use of STLs in the context of full power and Class A services. In those situations, the issue addressed by the Commission in the *Incentive Auction R&O*, and reaffirmed herein,²³¹ is whether a station may be reimbursed for non-comparable equipment in lieu of a displaced secondary service that is not itself eligible for reimbursement, whereas here the Commission anticipates replacement of existing equipment due to a location change.

²²² *Id.*

²²³ *See supra* note 206.

²²⁴ *NPRM*, 33 FCC Rcd at 7882, para. 58.

²²⁵ *Id.* at 7882, para. 59.

²²⁶ *Id.* *See also infra* Section III.C.2.c (discussing requirement to reuse existing equipment where possible).

²²⁷ *NPRM*, 33 FCC Rcd at 7882, para. 59.

²²⁸ *Id.* at 7882, para. 59, n.182. *See* 47 CFR § 73.310.

²²⁹ *NPRM*, 33 FCC Rcd at 7882, para. 59, n.182. *See also supra* note 136.

²³⁰ NAB Comments at 16-17.

²³¹ *Incentive Auction R&O*, 29 FCC Rcd at 6695-96, paras. 297-98 and 6822, para. 623; *supra* note 136.

70. *Category (2) Stations.* We conclude that Category (2) stations are eligible for reimbursement of up to 100 percent of eligible costs. In the *NPRM*, we stated our belief that it is also in the public interest to develop a similar standard for eligible expenses for reimbursement of Category (2) stations.²³² We noted that Category (2) stations could reasonably incur costs that are related to their need to temporarily dismantle equipment or modify their physical facilities, for example, costs of equipment, professional services such as engineering, and tower and construction work, similar to the costs incurred by full power and Class A stations.²³³ Additionally, we observed that, similar to Category (1), the service disruptions associated with these costs are likely to be significant in magnitude, but the number of stations incurring such costs is likely to be very small, and payments to such stations from the Reimbursement Fund will likewise be relatively small compared to total reimbursements for FM stations. With no opposition from commenters, we thus affirm these conclusions and adopt our proposal that, if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (2) stations should be reimbursed for up to 100 percent of eligible costs similar to full power and Class A stations.²³⁴

(ii) Interim Facilities – Category (3) Stations

71. We adopt our proposal that Category (3) stations be reimbursed for the cost of constructing new auxiliary facilities or upgrading existing auxiliary facilities to maximize signal coverage.²³⁵ We observed in the *NPRM* that, in the full power and Class A reimbursement program, the costs of interim facilities are reimbursed in the same manner as other costs incurred for a station to change channels, and we stated that we would apply the same approach to FM stations.²³⁶ This would permit FM stations to continue broadcasting while their primary facilities are off the air due to the need to protect tower personnel working on modifications related to the reorganization of broadcast television spectrum. Reimbursable costs could include costs of equipment, professional services such as engineering, and tower and construction work. No commenter disagrees with our proposal.

72. We adopt our tentative conclusion that it is reasonable for there to be some temporary disruption of FM service to permit construction work or maintenance on a collocated, adjacent, or nearby station.²³⁷ FM stations regularly power down or remain silent for temporary periods to accommodate tower or antenna work and transmitter maintenance, and because of this we stated that it is appropriate to reimburse costs for interim facilities only if they are needed to avoid service interruptions that would otherwise exceed ordinary construction or maintenance requirements.²³⁸ We further adopt our tentative conclusion that operating from interim facilities does not require service that is identical to the station's primary service, as indicated by the REA's requirement that we consider what expenses "reasonably minimize" disruption of service, rather than the Spectrum Act's mandate to reimburse expenses resulting from a channel change.²³⁹ There was no opposition in the record to these particular conclusions.

73. However, we reject the proposal in the *NPRM* to apply a graduated priority system to reimburse Category (3) stations that would have linked the length of service disruption avoided to the level of reimbursement eligibility.²⁴⁰ In the *NPRM*, we tentatively concluded that Category (3) FM

²³² *NPRM*, 33 FCC Rcd at 7882, para. 60.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *NPRM*, 33 FCC Rcd at 7883, para. 61.

²³⁶ *Id.*

²³⁷ *Id.* at 7883, para. 62.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.* at 7883-85, paras. 62-63, 65-66.

stations should qualify for maximum reimbursement on a graduated scale, with those stations off the air longest qualifying for the greatest percentage of reimbursement,²⁴¹ because we believed it would preserve finite funds for the most significant instances of service disruption.²⁴² NAB and NPR strenuously oppose this proposal and dispute our tentative conclusion that the longer the lost airtime, the more service disruption and, thus, the greater justification for reimbursement for the construction of permanent auxiliary facilities.²⁴³ NAB labels the scaled reimbursement proposal as arbitrary and capricious,²⁴⁴ while NPR asserts that many stations, especially noncommercial educational (NCE) stations, would forego installation of interim facilities if reimbursed for only half the cost.²⁴⁵ We share the concerns expressed regarding this proposal, and we do not adopt it.

74. Instead, we will allow all Category (3) stations whose service is subject to more than a reasonably minimal disruption, as defined below, for more than a *de minimis* amount of time (discussed in paragraph [80] below) to be reimbursed for their reasonably incurred costs to the same extent as Category (1) and (2) stations. If the \$50 million fiscal year 2018 allocation for FM stations should prove insufficient to fully reimburse all categories of FM station claimants, then the Media Bureau will allocate funds in the same manner among all FM claimants in all three categories, for instance by allocating the same percentage of funds to stations in all three categories. Although we have agreed with NAB and NPR that funds for reimbursement may exceed the \$50 million specifically earmarked for FM stations in fiscal year 2018,²⁴⁶ it is too soon to know whether any additional funds will be available or be sufficient to provide 100 percent reimbursement to all FM stations, particularly given the prioritization of full power and Class A stations and MVPDs with respect to fiscal year 2019 funds. Should additional fiscal year 2019 funds be available for reimbursement of FM stations, we direct the Media Bureau to distribute those funds in the same manner among all FM station categories.

75. NPR asks us to clarify that those FM stations able to seek reimbursement for interim facilities should not be limited to stations forced to go off air with their regular facilities, but should also include stations forced to reduce power to the point that they cannot cover 80 percent of their normal covered area or population.²⁴⁷ We concur with NPR that reimbursable interim facilities need not be limited to FM stations forced to go off air completely during repack-related work. In determining what would constitute “reasonably minimiz[ing] disruption of service” with respect to Category (3) stations, we observed in the *NPRM* that transmissions from interim facilities would not exactly replicate the areas or populations covered from the licensed transmitter site.²⁴⁸ We therefore proposed that 80 percent of an FM station’s coverage area or covered population should be replicated by the interim facility in order to constitute substantial interim coverage meeting the “reasonably minimiz[ing] disruption of service” standard.²⁴⁹ This was based on Commission precedent in other contexts holding that, when a rule requires

²⁴¹ *Id.* at 7883, para. 62.

²⁴² *Id.*

²⁴³ *Id.* at 7883, para. 63. See NAB Comments at 13-14 (stating that our proposal to peg the percentage of reimbursement to the time off air “fundamentally misapprehends the dramatic and damaging effect of going off air for FM stations and their listeners”); NPR Comments at 7 (stating that even days off air can cause “significant disruption,” especially if those days fall during time periods such as hurricane or wildfire season, when transmission of emergency information is vital). NPR further notes that time off air does not correlate either with harm to the station or to the station’s ability to pay for auxiliary facilities. NPR Comments at 7-8.

²⁴⁴ NAB Comments at 13.

²⁴⁵ *Id.* at 8.

²⁴⁶ See *supra* Section III.A.

²⁴⁷ NPR Comments at 9.

²⁴⁸ *NPRM*, 33 FCC Rcd at 7883-84, para. 64.

²⁴⁹ *Id.*

provision of a certain strength signal to an entire community, provision of that signal strength to 80 percent or more of either the area or the population of the community is considered to be substantial compliance with the rule.²⁵⁰ NAB, in its comments, prefers a standard under which only a station that can cover *both* 80 percent of its full-service covered population *and* 80 percent of its full-service covered area would be deemed to have a minimal disruption of service and, thus, be ineligible for reimbursement.²⁵¹ Under NAB's modification to our proposal, any station unable to achieve either coverage standard would be eligible to be reimbursed for interim facilities.

76. We are convinced by NAB that if an FM station that must reduce power to accommodate repack work can still achieve, from its primary facility or an existing auxiliary facility, both 80 percent or more of its normal population coverage and 80 percent or more of its normal area coverage, its service will be considered to be a reasonably minimal disruption of its service, and therefore such a station will not be deemed eligible for reimbursement to construct interim facilities. Thus, an FM station that would lose over 20 percent of either its normal covered population or its normal coverage area as a result of repack-related work will be eligible for reimbursement to construct or improve interim facilities to achieve both coverage benchmarks. We are persuaded by NAB's argument that radio is in large part an out-of-home medium that relies on mobile listeners,²⁵² and that covered population does not always accurately represent a radio station's listenership, especially during morning and evening "drive time" periods. We therefore believe that NAB's modification to our proposal more fully takes into account the adverse effects on an FM station's service caused by repack-related tower work, and we therefore modify our proposal as suggested by NAB.

77. When evaluating the sufficiency of interim facilities, we are similarly persuaded that our original proposal to use coverage benchmarks, that is, to reimburse for the costs of the interim facility only if it is able to achieve either 80 percent of the station's full-service covered population or 80 percent of its full-service covered area, is not the most reasonable approach. Both NAB and NPR note that there will likely be situations in which an FM broadcaster affected by repack work will not have the ability to locate an interim site that would achieve 80 percent of the main facility's population or area coverage.²⁵³ This could be due to the time available for repack-related construction work,²⁵⁴ lack of suitable sites from which to maximize signal coverage,²⁵⁵ or other factors. Moreover, we believe that a temporarily displaced FM broadcaster has the incentive to optimize interim service based on coverage area, covered population, and availability of auxiliary sites, as well as to minimize its time off air or operating with reduced facilities, and that this incentive is in line with Congress's expressed desire to minimize FM service disruption. We thus expect that an affected licensee will attempt to find an interim site that

²⁵⁰ *Id.* at 7883-84, para. 64 & n.185 (citing *CMP Houston-KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656, 10657 n.8 (2008); *Barry Skidelsky*, Order, 7 FCC Rcd 5577, para. 3 (1992)).

²⁵¹ NAB Comments at 12. *See also* NPR Comments at 9. NAB argues that it would be disruptive to "the bulk" of a station's audience to lose service even when 80 percent of the station's coverage area receives service, and likewise that a station should not lose listeners driving through an otherwise unpopulated portion of the coverage area when 80 percent of the population is covered by its primary or existing auxiliary facilities. NAB Comments at 12.

²⁵² NAB Comments at 12.

²⁵³ NAB states that "there may be instances where an FM station is simply unable to construct interim facilities that will cover 80 percent of its coverage area. For example, a station may be unable to find space on an existing tower that can accommodate interim facilities, and unable to secure necessary approvals for an alternate tower in time to avoid a loss of service." NAB Comments at 12. *See also* Letter from Patrick McFadden, Associate General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, at 1 (Jan. 31, 2019). NPR recounts a situation in which a noncommercial educational FM station was given no notice by its tower lessor before being forced off air for 11 days. NPR Comments at 5.

²⁵⁴ NPR Comments at 5.

²⁵⁵ NAB Comments at 12.

maximizes signal coverage and minimizes time off air to the extent possible in the time allotted. We therefore do not adopt our proposal to require that the interim facility meet a minimum amount of area or population coverage in order to qualify for interim facility cost reimbursement. We instead will reimburse FM broadcasters forced to construct new or improve existing interim facilities during repack work for interim facilities that (1) are operating during the time the station's main facility is off air or operating at reduced power due to repack-related construction for a television station, and (2) provide greater signal coverage than existing facilities can provide during such construction. To demonstrate this, the licensee must submit contour maps demonstrating that the interim facility for which reimbursement is sought provides both greater population coverage and greater area coverage than the powered-down main facility.

78. Relatedly, in the *NPRM*, we proposed that we will not reimburse for tower lease payments for interim facilities except during the period when the repacked television station's construction work is actively preventing the FM station from broadcasting from its primary facility and not for any period of time thereafter.²⁵⁶ NPR and NAB both seek clarification on this issue. Both argue that some owners of towers that are potential interim transmitter sites may require minimum lease periods longer than the actual time off air or operating with reduced power during repack-related construction,²⁵⁷ and that therefore "the Commission should provide public radio stations with the flexibility and resources they need by allowing reimbursement for a range of reasonable temporary tower leasing arrangements."²⁵⁸ Neither commenter provides concrete examples of such lessors; at most NPR states that "some public radio stations report" that potential lessors will require such minimum leases.²⁵⁹ We conclude that reimbursing for minimum lease terms beyond the period of interim operations necessitated by repack work is not a cost "reasonably incurred . . . to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum." We seek to minimize any potential for manipulation by, for example, tower owners taking advantage of potential tenants' eligibility for REA reimbursement to impose unnecessarily expensive and/or lengthy lease terms. We therefore adopt our initial conclusion that FM station operators should be reimbursed only for the period of interim operations necessitated by repack work.

79. We do clarify, as suggested by NPR, that we will reimburse for leasing interim facilities even if they are not used continuously during a repack-related construction period. NPR notes that given the uncertainties of tower work due to repacking, an FM station might not be required to reduce power or go off air for a continuous period of time, but might have multiple periods where interim operation is necessary, interspersed with periods of construction downtime in which the station can operate at full power from its primary site.²⁶⁰ In such instances, given that auxiliary facilities do not operate simultaneously with main facilities, we will consider the time off air or operating with reduced facilities, for which the FM station may claim reimbursement for leasing interim facilities, to begin on the first day an FM station must reduce power or shut down due to repacking work, and to run until the completion of repack-related tower work and the resumption of full-power operation from the primary site, without deducting any intervals during that time period during which the FM station is temporarily able to resume normal operation.

²⁵⁶ *NPRM*, 33 FCC Rcd at 7885, para. 68.

²⁵⁷ NAB Comments at 17; NPR Comments at 10. Neither commenter specifies what the duration of these minimum lease terms might be. NPR refers to "blocks of time longer than actual or anticipated downtime," NPR Comments at 10, while NAB offers the example of a year-long lease, NAB Comments at 17.

²⁵⁸ NPR Comments at 10. *See also* NAB Comments at 17 ("The FCC should also be flexible in reimbursing stations for the minimum leasing term for a tower lease associated with auxiliary facilities.").

²⁵⁹ NPR Comments at 10.

²⁶⁰ *Id.*

80. Additionally, we refine our proposed definition of *de minimis* disruption of service with regard to interim facilities to mean time off air²⁶¹ for less than 24 hours, or time off air confined to the hours of 12:00 midnight and 5:00 a.m. local time. In the *NPRM*, we proposed to consider *de minimis*, and thus non-reimbursable, any stations forced off air due to repacking work for time periods that are (a) less than 24 hours; (b) during the hours of 10:00 p.m. to 6:00 a.m. local time; or (c) less than five non-peak broadcast hours per day.²⁶² NAB counters that we should consider as *de minimis* only time off air confined to no more than five overnight work periods between the hours of 12:00 midnight and 5:00 a.m.²⁶³ We continue to believe that a station off the air for less than one day is unlikely to undergo the considerable time and expense of securing interim facilities for such a short period, and that such an interruption in service is consistent with normal station maintenance efforts. Although we agree with NAB's justification for a shorter overnight period, we believe that a station that must only go off air during the least-listened to hours of the broadcast day – between midnight and 5:00 a.m. – has already reasonably limited its service disruption, no matter how many days it is off air, and thus should not require reimbursement for interim facilities to cover those hours. Moreover, we find that NAB presents no reasonable justification for limiting the *de minimis* definition to just five overnight periods, and so we adopt as part of our *de minimis* definition time off air, for whatever period of days, limited to the hours of 12:00 a.m. to 5:00 a.m. local time. We also eliminate the third prong (item (c) above) of our proposed definition. While no commenter specifically addressed this prong, we find that the term “non-peak hours” could be subject to a variety of interpretations and therefore may be difficult to administer.

81. Although our decision not to adopt the proposed graduated reimbursement scale for Category (3) stations reduces the significance of the total time an FM station's primary facilities must be off air or operating with reduced power, we nevertheless adopt our proposal to require an FM station seeking reimbursement to certify the amount of time it could not broadcast from its primary facility due to construction work on a repacked television station.²⁶⁴ As noted above, we must have a mechanism to evaluate the total time needed to, among other things, lease interim facilities. We further adopt our proposal that such certifications may be subject to audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse. We therefore require a repacked television station to provide, upon request, a statement or other information regarding the dates that work was done on a tower that impacted the FM station.²⁶⁵

b. Channel Change Equipment

82. In the *NPRM*, we expressed our expectation that no FM station will be forced to change its frequency as a result of the reorganization of broadcast television spectrum and, thus, tentatively concluded that expenses for retuning or replacing antennas or transmitters to accommodate channel changes will not be eligible for reimbursement.²⁶⁶ No commenter disputes our stated expectation, and we therefore conclude that expenses for retuning or replacing antennas or transmitters for channel changes will not be eligible for reimbursement.

²⁶¹ For purposes of this paragraph, time “off air” includes operating at reduced power consistent with the standards set forth in paragraph 75.

²⁶² *NPRM*, 33 FCC Rcd at 7884, para. 65.

²⁶³ NAB Comments at 15. NAB contends that many stations broadcast programming, such as baseball, basketball, or hockey games, that can extend beyond 10:00 p.m., and that many stations begin drive-time programming at 5:00 a.m. *Id.*

²⁶⁴ *NPRM*, 33 FCC Rcd at 7885, para. 67.

²⁶⁵ *Id.* In the *NPRM*, we also noted our intent to conduct audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse. *Id.* See *infra* Section III.D.5.

²⁶⁶ *NPRM*, 33 FCC Rcd at 7885, para. 69.

c. Equipment Upgrades and Reuse of Existing Equipment

83. We adopt our tentative conclusion in the *NPRM* that the full power and Class A comparable facilities reimbursement standard cannot be applied in the same manner to FM stations in Categories (1) and (2) because the goal is to reasonably replicate the service type and area from a different location (Category (1)) or restore service using alternate equipment (Category (2)).²⁶⁷ In some cases, this can be accomplished using existing equipment or its equivalent, but in other cases this will require modified or differently configured equipment.²⁶⁸ We conclude that Category (1) and (2) stations need not necessarily construct comparable facilities in order to be reimbursed, but should be reimbursed based on constructing facilities that replicate as closely as feasible the signal contours of the facility they replace, using existing equipment if possible but new equipment as needed.

84. We also adopt our proposal that, to the extent that a Category (1) station must construct a new tower, we would reimburse tower construction expenses only upon a showing that no space is available on other local towers that would enable it to reasonably replicate current service.²⁶⁹ NAB supports this proposal.²⁷⁰ Even with such a showing, we sought comment as to whether and how we should discount any reimbursement for tower construction costs, given that such “vertical real estate” carries with it the potential for revenue generation for the FM station, perhaps in substantial amounts.²⁷¹ NAB opposes the possibility of a discount, labeling such revenues as “wholly speculative” and stating that any such revenues “could be rivaled by increased operating expenses associated with a new tower.”²⁷² We believe that, in the rare cases in which construction of a new tower is the only way to ensure the replacement of an FM station forced to relocate as a result of the television station repack, the decision whether to discount any reimbursement for tower construction costs should be made on a case-by-case basis, and we direct the Media Bureau to make these determinations.

85. We proposed to adopt a requirement, similar to that applied to full power and Class A stations, that FM stations reuse their own equipment to the extent possible rather than acquiring new equipment, and to justify why it is reasonable under the circumstances to purchase new equipment rather than modifying existing equipment.²⁷³ As noted, we do not expect that FM stations will be required to change frequencies, so channel-related equipment modifications will not be required. Thus, we believe it is reasonable to require FM stations seeking reimbursement to provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment. No commenter objects to this proposal as applied to FM stations, and we adopt this requirement.

86. Further, we adopt our proposal to follow the Commission’s determination in the existing reimbursement program that we should not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced.²⁷⁴ For example, we would not reimburse an analog-only FM station to add hybrid digital capability, nor would we reimburse an FM station for rule-compliant modifications that would expand its service area beyond its current facilities, although it could

²⁶⁷ *Id.* at 7885-86, para. 70. As noted above, full power and Class A stations can be reimbursed only for comparable facilities. *See supra* para. 39, note 123.

²⁶⁸ For instance, a move of an FM station’s antenna to a lower spot on the same tower could, in order to replicate the station’s existing signal contours, require replacement equipment with an increase in effective radiated power (ERP), either by using a transmitter with higher power output or an antenna with higher gain.

²⁶⁹ *NPRM*, 33 FCC Rcd at 7886, para. 71.

²⁷⁰ NAB Comments at 17.

²⁷¹ *NPRM*, 33 FCC Rcd at 7886, para. 71.

²⁷² NAB Comments at 17.

²⁷³ *NPRM*, 33 FCC Rcd at 7886, para. 73.

²⁷⁴ *Id.* at 7886, para. 72.

seek reimbursement of costs needed to restore its original coverage area.²⁷⁵ NAB generally supports this policy, but states that “technological advances” may render previously optional features standard, thus making some upgrades “inevitable.”²⁷⁶ As discussed above, we acknowledge that some stations may not be able to replace older, legacy equipment with precisely comparable equipment due to advances in technology.²⁷⁷ FM stations can seek reimbursement for the costs demonstrated to be necessary for constructing facilities that replicate as closely as feasible the signal contours of the facility they replace, recognizing that the equipment may include some improved functionality. We also clarify, at NAB’s request,²⁷⁸ that maintaining an FM station’s digital (HD) capability on interim facilities will be reimbursable, as long as the station’s main facilities were broadcasting in HD as of April 13, 2017.

87. Finally, we adopt our tentative conclusion that FM stations that receive or have received reimbursement of expenses from sources of funding other than the Reimbursement Fund, such as co-located television stations and/or tower owners providing reimbursement under contractual provisions, will not receive reimbursement for those expenses from the Reimbursement Fund.²⁷⁹ While the REA specifies that an FM station that has received reimbursement for “interim facilities” may not receive any reimbursements under the REA,²⁸⁰ we believe that a similar prohibition should extend to an FM station that has received reimbursement from third parties for costs other than interim facilities. For stations that are reimbursed by a third party, there is nothing for the Commission to reimburse because the stations have already been made whole.²⁸¹ We also find that a cost that is reimbursed by another source of funding is not a “cost . . . incurred” by the FM station under Section 511(l)(1)(A).²⁸² NAB supports this tentative conclusion and other commenters did not address it.²⁸³ FM stations will be required to certify on their reimbursement submissions that they have not received or do not expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA. This is consistent with our treatment of LPTV/translator stations, as discussed above.²⁸⁴ Also, consistent with our approach for LPTV/translator stations, we will require that FM stations first seek reimbursement from other sources before seeking reimbursement of any potential shortfall under the REA.²⁸⁵

d. Lost Revenues

88. The REA, like the 2012 Spectrum Act, prohibits reimbursement of FM stations for “lost revenues.”²⁸⁶ We adopt our proposal to define “lost revenues” for purposes of reimbursing FM stations similar to how we defined it in the *Incentive Auction R&O* – specifically, “revenues that a station loses as

²⁷⁵ *Id.* For example, an analog-only Category (1) FM station would not be reimbursed for an upgrade to hybrid analog-digital service, except to the amount necessary to replace its prior analog-only service. We likewise would not reimburse for HD Radio license fees for the use of the proprietary FM digital transmission system.

²⁷⁶ NAB Comments at 16.

²⁷⁷ *See supra* para. 45 (if cost to replace certain equipment is reasonably incurred so that an LPTV/translator station can construct its granted Special Displacement Window construction permit facility, we will reimburse for the cost of that equipment, recognizing that the equipment may include some improved functionality).

²⁷⁸ NAB Comments at 16.

²⁷⁹ *NPRM*, 33 FCC Rcd at 7886, para. 72.

²⁸⁰ 47 U.S.C. § 1452(l)(1)(C).

²⁸¹ *See supra* note 166 and accompanying text.

²⁸² *See id.* *See also* 47 U.S.C. § 1452(l)(1)(A).

²⁸³ NAB Comments at 18.

²⁸⁴ *See supra* paras. 50-53.

²⁸⁵ *NPRM*, 33 FCC Rcd at 7877, para. 49. *See supra* para. 53.

²⁸⁶ *See* 47 U.S.C. § 1452(1)(1)(B).

a direct or ancillary result of the reorganization of broadcast television spectrum, including the reverse auction and the repacking process.”²⁸⁷ Under this definition, for example, we would not reimburse a station’s loss of advertising revenues while it is off the air implementing either replacement or interim facilities, or for refunds a station is required to make to advertisers for payments for airtime as a result of being off the air in order to implement such a facility change.²⁸⁸ Commenters did not oppose our conclusions regarding lost revenues.²⁸⁹ This, again, is consistent with the definition of “lost revenues” adopted with regard to LPTV/translator stations, above.²⁹⁰

D. Reimbursement Process

89. As we stated in the *NPRM*, our goal is to adopt a reimbursement process for the newly eligible entities that is as simple and straightforward as possible to minimize both the costs associated with reimbursement as well as the burdens on affected parties and the Commission.²⁹¹ At the same time, we are committed to a process that is fair to all eligible entities and that maximizes the funds available for reimbursement by avoiding waste, fraud, and abuse.

90. As discussed below, we adopt a reimbursement process for LPTV/translator and FM stations that is substantially similar to the process currently being used by the Commission to provide reimbursements to full power and Class A stations and MVPDs, and will make an effort to simplify the forms and certain processes and procedures where appropriate. As we stated in the *NPRM*, we believe that using a process and resources that have proven effective and that already are familiar to many of the entities that will be seeking reimbursement will help result in a smooth and efficient reimbursement process.²⁹² Several commenters urge us to adopt procedures that closely mirror those currently in use as they are well-understood by broadcasters as well as the consultants and attorneys they employ.²⁹³ At the same time, our goal is to create reimbursement forms and processes for use by the newly eligible entities that are as streamlined and easy to understand as possible to facilitate reimbursement for these entities.

1. Eligibility Certification and Estimated Expenses

91. As proposed in the *NPRM*, all newly eligible entities that believe they meet the eligibility requirements and intend to request reimbursement for eligible expenses must file a certification indicating that they intend to request reimbursement funds and meet the criteria for eligibility (Eligibility Certification), as well as a form that provides information on their existing broadcasting equipment and estimated costs eligible for reimbursement (Reimbursement Form).²⁹⁴ The Reimbursement Form will be a modified version of the reimbursement form used for full power and Class A stations in the existing

²⁸⁷ *NPRM*, 33 FCC Rcd at 7887, para. 74. In the *Incentive Auction R&O*, the Commission defined “lost revenues” to include “revenues that a station . . . loses as a direct or ancillary result of the reverse auction or the repacking process.” *Incentive Auction R&O*, 29 FCC Rcd at 6824-25, para. 630.

²⁸⁸ *Id.*

²⁸⁹ See NPR Comments at 5.

²⁹⁰ See *supra* para. 48.

²⁹¹ See *NPRM*, 33 FCC Rcd at 7887, para. 75.

²⁹² See *id.* at 7887, para. 76.

²⁹³ See NAB Comments at 20. See also HC2 Reply Comments at 6-7 (arguing that the “most efficient and prudent way” to establish a reimbursement process for newly eligible entities is to make as few changes as possible in FCC Form 399, as both broadcasters and the FCC staff are now familiar with the existing form).

²⁹⁴ See *NPRM*, 33 FCC Rcd at 7887-88, paras. 77-78. The Eligibility Certification may be combined with the Reimbursement Form or may be a separate form. In the *Order* accompanying the *NPRM*, the Commission directed the Media Bureau “to revise the forms to be used by eligible LPTV/translator and FM stations to claim reimbursement from the Reimbursement Fund and for any other Reimbursement Fund-related purposes.” *Order*, 33 FCC Rcd at 7892, para. 91.

program (FCC Form 2100, Schedule 399). The Media Bureau will release the form(s) and announce the deadline by which LPTV/translator and FM entities that intend to request reimbursement must file the Eligibility Certification and Reimbursement Form.

92. Entities must certify on the Eligibility Certification, *inter alia*, that they meet the eligibility criteria adopted in this proceeding and provide documentation or other evidence to support their certification.²⁹⁵ With respect to LPTV/translator stations, we adopt our proposal that these stations must certify compliance with the minimum operating requirement adopted herein²⁹⁶ and provide supporting documentation, which could, by way of example, include evidence of programming aired by the station during the relevant period such as program guides, electric power bills, or other evidence showing that the station was transmitting during this time period.²⁹⁷ HC2 recommends that the Commission “be flexible with respect to such evidence, and accept evidence that reasonably verifies operation during the designated time period, such as Internet access bills.”²⁹⁸ We agree with HC2. To facilitate the certification process while also limiting the burden on stations attempting to comply, we find that examples of documentation above are illustrative and recognize that there may be other types of supporting evidence of LPTV/translator minimum operating requirements. With respect to FM stations, we adopt our proposal that such stations must certify that they were licensed and transmitting at the facility implicated by the reorganization of broadcast television spectrum on April 13, 2017, or had an application for a license to cover on file with the Commission on that date.²⁹⁹ As noted above, we also require LPTV/translator and FM stations to certify on their reimbursement submissions that they have not received or do not expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA.³⁰⁰

93. Entities that certify that they meet the eligibility criteria may be subject to audits, data validations, site visits, or other verifications to substantiate the supporting evidence and representations with respect to eligibility, and such entities may be directed to make available any relevant documentation upon request from the Commission or its contractor.³⁰¹ A false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission’s rules.³⁰²

²⁹⁵ See *supra* Sections III.B.1 (LPTV/translators) and Section III.C.1 (FM).

²⁹⁶ We agree with HC2 that for stations that an operator acquired after April 13, 2016, new owners be allowed: (1) to limit this certification to the period that they owned such station, and (2) to reasonably rely on representations from the seller of such station for the period between April 13, 2016 and the date a purchase is consummated. See HC2 Reply at 3.

²⁹⁷ See *NPRM*, 33 FCC Rcd at 7870, 7887-88, paras. 33, 77. LPTV Coalition suggests if a station “filed to be dark for any or part of the qualifying period,” then the Commission should use this as an initial test to disqualify the station from reimbursement eligibility. See LPTV Coalition Comments at 7. However, we decline to adopt a procedure under which filing a silent special temporary authorization (STA) during the relevant period automatically disqualifies a station from the reimbursement program. Instead, we will treat the existence of a silent STA as a rebuttable presumption and permit stations that filed silent STAs to demonstrate that they met the minimum operating requirement.

²⁹⁸ HC2 Reply Comments at 4. HC2 agrees that it is appropriate to require stations to certify that they meet minimum transmitting requirements because “verification is an important element in approving stations’ reimbursement eligibility.” *Id.* at 3-4.

²⁹⁹ See *NPRM*, 33 FCC Rcd at 7879, para. 52.

³⁰⁰ See *supra* paras. 53, 87.

³⁰¹ See *NPRM*, 33 FCC Rcd at 7888, para. 77.

³⁰² See *id.* at 7888, para. 77 & n.205.

94. LPTV/translator and FM stations must also list their existing broadcasting equipment and the types of repacking-related costs they expect to incur on the Reimbursement Form.³⁰³ Similar to the reimbursement form used by full power, Class A, and MVPD entities, the Reimbursement Form for newly eligible entities will include a cost catalog that provides a list of the types of costs LPTV/translator and FM stations are most likely to incur together with a range of prices applicable to such expenses. The Media Bureau has sought comment on a proposed cost catalog of potentially reimbursable costs that may be incurred by LPTV/translator and FM stations as a result of the incentive auction and repacking process to facilitate the process for reimbursing these entities.³⁰⁴ The final version of the cost catalog will be embedded in the revised Reimbursement Form. Entities may select the estimates indicated on the form or, alternatively, may choose to provide their own estimates. We note that some LPTV/translator and FM stations will have already incurred costs eligible for reimbursement by the time the rules adopted in this proceeding become effective and we begin accepting Eligibility Certifications and Reimbursement Forms. As proposed in the *NPRM*, these entities may indicate on their Reimbursement Form their actual costs and provide their invoices, instead of providing estimates, for costs already incurred before the Reimbursement Form is filed.³⁰⁵ Entities must also indicate on the form whether they will need to purchase new equipment in order to continue operating or whether they can reuse some of their existing equipment.³⁰⁶

95. In response to the Commission's invitation in the *NPRM* for comment on ways to streamline the reimbursement process for LPTV/translator and FM stations,³⁰⁷ NTA proposes that we use a "Fast Track" approach to streamline reimbursement applications for stations willing to accept a strict dollar cap on their reimbursement.³⁰⁸ NTA further proposes that stations that opt to use the proposed "Fast Track" approach be exempt from certain reimbursement requirements, including the requirement to submit cost estimates and the requirement to reuse existing equipment.³⁰⁹ While we share the goals these commenters are seeking to achieve of simplifying and expediting the reimbursement process,³¹⁰ we find

³⁰³ See *id.* at 7888-89, para. 78. See NAB Comments at 20 ("NAB generally supports the *NPRM*'s proposals for the submission of cost estimates and the process for making funds available."); LPTV Coalition Comments at 7 (concurring "with the submission of estimates based on a revised cost catalog").

³⁰⁴ See *LPTV/Translator/FM Cost Catalog PN*.

³⁰⁵ See *NPRM*, 33 FCC Rcd at 7889, para. 79. NAB and LPTV Coalition support permitting entities to submit actual expenses. See NAB Comments at 20; LPTV Coalition Comments at 7.

³⁰⁶ See *NPRM*, 33 FCC Rcd at 7889, para. 78.

³⁰⁷ See *id.* at 7887, para. 76 ("We invite comment generally on whether and how the [reimbursement] process might be further streamlined in light of the fact that the money available to reimburse LPTV/translator and FM stations is less than that allocated to full power, Class A, and MVPD entities, individual entity expenses may also be expected to be smaller, and many of the stations seeking reimbursement may already have incurred the costs associated with the transition.").

³⁰⁸ See NTA Comments at 2-3. NTA initially proposed a reimbursement limit of \$31,000 for Fast Track applicants, but suggested in its Reply Comments that a higher limit might be needed and that the Commission should make this determination. See *id.* at 3; NTA Reply at 1-2. NAB and HC2 Broadcasting support NTA's "Fast Track" proposal. See NAB Reply at 4-5; HC2 Reply at 7.

³⁰⁹ See NTA Comments at 3-5, 7-8. NTA suggests that the Reimbursement Form can be modified to use include a check box for stations that opt to use the Fast Track, as well as check boxes for "other compliance issues." *Id.* at 5.

³¹⁰ As noted above, in order to facilitate and streamline the reimbursement process for newly eligible entities, we commit to making our reimbursement forms and processes for these entities as simple and easy to understand as possible. See *supra* para. 90; *NPRM*, 33 FCC Rcd at 7889, para. 80. Specifically, as described above, translators and other newly eligible entities will be able to select from the catalog of costs embedded in the Reimbursement Form the types of repacking-related costs they expect to incur and the related cost estimate for these items, thus facilitating the submission of estimated expenses for these entities. See *supra* para. 94. Entities that have already incurred costs related to the transition will be able to submit evidence of actual costs incurred instead of estimated

(continued....)

that the “Fast Track” proposal is not a feasible option. First, it is critical that we obtain an accurate estimate of eligible expenses from all entities requesting reimbursement to ensure that we are not over-allocating for a particular entity and that we have the information regarding the total demand on the Reimbursement Fund. It is only by having an accurate estimate of the total demand on the Fund that the Media Bureau can make reasoned allocation decisions and ensure a fair and equitable distribution of reimbursement funds.³¹¹ We also note that the REA itself contemplates that entities seeking reimbursement will submit cost estimates. Section 511(m)(2) of the REA provides that “[t]he rulemaking completed under paragraph (1) shall include . . . procedures for the submission and review of cost estimates and other materials related to those costs consistent with the regulations developed by the Commission” for reimbursement of full power, Class A, and MVPD entities under Section 6403(b) of the Spectrum Act.³¹² Second, although NTA’s proposal for a “Fast Track” contains few details, the intent of the proposal appears to be to avoid requiring entities that avail themselves of this approach from the necessity to file certain information and/or follow certain procedures that would otherwise apply. We note that we cannot, consistent with the REA, excuse entities from making the certifications in the Eligibility Certification that are necessary to ensure that entities seeking reimbursement meet the criteria for eligibility established in this proceeding. Similarly, we must obtain other information from entities seeking reimbursement, such as their existing broadcasting equipment, to ensure that we have adequate information upon which to make reasoned allocation decisions and avoid waste, fraud, and abuse. As explained above, we believe that it is critical to have estimates. Thus, upon consideration, we cannot identify any filings or procedures that could be eliminated in a manner that would make a “Fast Track” achievable.

96. We decline to treat non-profit entities differently from for-profit entities in the reimbursement process for newly eligible entities. NPR proposes that, in distributing reimbursement funds, the Commission should “prioritize the availability and timing of reimbursement for non-profit public radio stations (and possibly other non-profits), which have less ability to absorb or ‘front’ the cost” of activities needed to avoid time off-air or at reduced power during the transition.³¹³ Our goal is to streamline and expedite our reimbursement process for all newly eligible entities, including the payment of initial and any subsequent allocations and the processing of reimbursement requests. We expect all entities to be able to access reimbursement funds quickly once our reimbursement process is underway, thereby avoiding any need to prioritize the timing of allocations and/or reimbursement payments to non-profit or other entities. While we stated our intention in the *Incentive Auction R&O* to issue NCE broadcasters initial allocations equivalent to a higher percentage of their estimated costs than commercial broadcasters due to the unique funding constraints faced by NCEs,³¹⁴ we do not believe a similar approach is warranted with respect to newly eligible entities. As noted above, many newly eligible entities will already have incurred eligible expenses by the time they can begin requesting reimbursement pursuant to the rules adopted in this proceeding.³¹⁵ In addition, their average total expenses eligible for reimbursement is likely to be less than for full power stations. We therefore believe it is less important that we provide a higher initial allocation to NCE entities, or otherwise prioritize these entities in the reimbursement process, to ensure they can fund the modifications they must make as a result of the repacking process.

(Continued from previous page) _____

costs. *Id.* These features of the Reimbursement Form and process should facilitate the submission of cost estimates and simplify the process for all eligible entities.

³¹¹ NAB and LPTV Coalition support the *NPRM* proposal to require the submission of cost estimates. See NAB Comments at 20; LPTV Coalition Comments at 7.

³¹² 47 U.S.C. § 1452(m)(2).

³¹³ NPR Comments at 12.

³¹⁴ See *Incentive Auction R&O*, 29 FCC Rcd at 6818-19, para. 614.

³¹⁵ See *supra* para. 94.

2. Reimbursement Allocations

97. As proposed in the *NPRM*, once the Media Bureau completes its review of the Eligibility Certification and Reimbursement Form, it will issue an initial allocation from the Reimbursement Fund to each eligible LPTV/translator and FM station.³¹⁶ These funds will be available for the entity to draw down as expenses are incurred. The amount of the initial allocation, as well as the total amount allocated to each entity, will depend in part on the number of newly eligible entities that file an Eligibility Certification and the amount available for reimbursement for each type of entity from fiscal year 2018 funds. In the *NPRM*, we noted that, in the context of the existing reimbursement process for full power and Class A stations and MVPDs, the Media Bureau determined the appropriate allocation amount based on the circumstances and information available from submitted Reimbursement Forms.³¹⁷ Consistent with this approach, the Commission has directed the Media Bureau to make allocation decisions for stations eligible for reimbursement under the REA.³¹⁸

98. After the initial allocation of reimbursement funds, the Media Bureau may issue one or more subsequent allocation(s). As proposed in the *NPRM*, the timing and amount of these subsequent allocation(s) will depend in part on the fiscal year 2018 funds remaining in the Reimbursement Fund for each type of entity and the amount, if any, allocated from fiscal year 2019 funds, the eligible expenses entities have incurred, and the Commission's goal in terms of the amount of eligible costs we expect to be able to cover for each entity.³¹⁹ As discussed above, fiscal year 2019 funds will be subject to prioritization of reimbursement for full power and Class A stations and MVPDs.³²⁰ We direct the Media Bureau to allocate fiscal year 2019 funds consistent with this prioritization approach.

99. NAB argues that the FCC should not hold back funds for multiple allocations unless there is reason to believe that the available funds will be insufficient.³²¹ Instead, NAB proposes that, as soon as the Commission receives cost estimates and assuming sufficient funds are available, the Commission should immediately make 80 percent of estimated costs available to all eligible entities and should consider making even more available in its initial allocation unless there is a concrete reason to believe the available funds will be insufficient.³²² We decline at this time to adopt NAB's proposal. We believe the best approach is for the Media Bureau to determine initial allocation amounts after cost estimates are submitted and total demand on the Reimbursement Fund is assessed, consistent with its experience with the full power and Class A reimbursement program.

100. Similarly, we believe the best approach is for the Media Bureau to determine the timing and number of any additional allocations,³²³ consistent with the approach we have taken with respect to full power, Class A, and MVPD entities, based on prudent fund administrative practices, the amount of

³¹⁶ See *NPRM*, 33 FCC Rcd at 7889, para. 81.

³¹⁷ *Id.*

³¹⁸ See *Order*, 33 FCC Rcd at 7892, para. 91.

³¹⁹ See *NPRM*, 33 FCC Rcd at 7890, para. 82.

³²⁰ See *supra* Section III.A.2. As we have stated in the past, the verified estimates used for purposes of the Media Bureau's allocations to full power and Class A stations and MVPDs are likely to rise as those entities continue to refine and supplement their estimates as their construction planning and execution continues, including, for instance, as stations more fully evaluate tower and rigging needs, incur engineering and other consulting costs, and realize the impact of cost increases in equipment and services over the transition period. See, e.g., *Initial Allocation PN*, 32 FCC Rcd at 7558.

³²¹ See NAB Comments at 20.

³²² *Id.* at 20-21.

³²³ LPTV Coalition urges us to make a single, lump sum allocation to eligible entities rather than making multiple allocations. See LPTV Coalition Comments at 7-8.

estimated expenses, the amount of funds drawn down, and the amount remaining in the Reimbursement Fund for each type of eligible entity.

3. Prioritization of Types of Costs

101. We will permit entities to be reimbursed for both hard costs, such as new equipment and tower rigging, and soft costs, such as legal, engineering, and project management expenses, as proposed in the *NPRM*.³²⁴ In addition, we will not prioritize hard costs over soft costs.

102. We noted in the *NPRM* that the total amount of reimbursement funds available to LPTV/translator or FM stations may not be sufficient to cover all eligible expenses at the end of the program and it may therefore be necessary to establish a prioritization scheme for reimbursing eligible expenses.³²⁵ We sought comment on whether we should, at least with respect to initial allocations, prioritize the payment of certain costs, such as certain equipment and engineering expenses, over other types of expenses, such as project management fees.³²⁶ While some commenters who address this issue support prioritization of hard costs over project management and other soft costs,³²⁷ others oppose such an approach.³²⁸ We are persuaded by NPR's position that "soft costs" such as project management fees may be just as important to stations as "hard costs" and should be reimbursed in the same manner and priority as such costs, and find no basis in the current record, nor any statutory direction, to prioritize hard costs over soft costs. Thus, we conclude that we will reimburse all costs, hard and soft, in the same manner in order to allow entities to determine how best to manage their reimbursement funds in light of their own transition needs.

4. Procedures for Submission of Invoices, Financial Forms, and Payments

103. As proposed in the *NPRM*, we will use substantially similar procedures for the submission of reimbursement requests and the issuance of reimbursement payments to the newly eligible entities as we use in the existing full power and Class A station reimbursement program.³²⁹ Specifically, LPTV/translator and FM stations must submit requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the Reimbursement Form (FCC Form 2100, Schedule 399), which the Media Bureau will revise for this purpose. As required for full power and Class A stations and MVPDs, LPTV/translator and FM stations will submit the Reimbursement Form electronically via the Commission's LMS database. After an allocation is made, stations will be able to draw reimbursement payments from the U.S. Treasury as they incur expenses eligible for reimbursement and submit invoices that are approved for payment.

104. As also proposed in the *NPRM*, we will revise versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations.³³⁰ These procedures are set forth in the *Financial Procedures PN*.³³¹

³²⁴ See *NPRM*, 33 FCC Rcd at 7890, para. 83.

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ See NAB Comments at 20 ("[I]f the Commission determines . . . that funding is insufficient to reimburse all expenses incurred by displaced LPTV stations, we support the Commission's proposal to prioritize the payment of certain hard costs, including equipment and installation over soft costs, such as project management fees").

³²⁸ See NPR Comments at 10-11 (arguing that project management fees should be fully reimbursable for FM stations in the same manner and priority as other expenses and noting that about half of the affected public radio stations that NPR surveyed indicated that they will need outside project management help to manage their station's response to the repack). See also LPTV Coalition Comments at 3 (arguing that the FCC should first review cost estimates before deciding whether to prioritize certain costs).

³²⁹ *NPRM*, 33 FCC Rcd at 7890-91, para. 85.

³³⁰ See *id.*

At the beginning of the reimbursement process, LPTV/translator and FM stations will be required to use a procedure and form similar to our existing FCC Form 1876³³² to submit payment instructions to the Commission and to provide bank account information for the reimbursement payment recipient in the CORES Incentive Auction Financial Module.³³³ Entities will be able to track reimbursement payments using the Auction Payments component of the CORES Incentive Auction Financial Module.³³⁴

105. Prior to the end of the reimbursement period, entities must provide information regarding their actual and, if applicable, any remaining estimated costs and will be issued a final allocation, if appropriate, to cover the remainder of their eligible costs. If any allocated funds remain in excess of the entity's actual costs determined to be eligible for reimbursement, those funds will revert back to the Reimbursement Fund. In addition, if an overpayment is discovered, even after the final allocation has been made, the entity receiving an overpayment must return the excess to the Commission.³³⁵

106. As we proposed in the *NPRM*, we will simplify and streamline the forms to be used by newly eligible entities to facilitate and expedite the reimbursement process.³³⁶ NPR urges us to incorporate specific features to make the forms easier to use, including avoiding character or word count restrictions and including print and "cut and paste" functionality in the web-based forms.³³⁷ We plan to pay close attention to these and other suggestions for improving our processes as we develop forms and procedures for use by newly eligible entities. We are also mindful, however, of those commenters who urge us to make as few changes as possible to the existing forms to avoid the need for broadcasters and others who are used to the current forms to spend time and resources familiarizing themselves with new forms.³³⁸ Our goal is to incorporate changes that facilitate and streamline the reimbursement process while avoiding unnecessary changes that could negatively impact users.

5. Measures to Prevent Waste, Fraud, and Abuse

107. As proposed in the *NPRM*, we establish strong measures to protect against waste, fraud, and abuse with respect to disbursements from the Reimbursement Fund for newly eligible entities.³³⁹ For example, entities must document their actual expenses, including by providing all relevant invoices and receipts, and retaining other relevant records to substantiate their certifications and reimbursement claims. Similar to the existing requirement for full power, Class A, and MVPD entities,³⁴⁰ LPTV/translator and FM stations seeking reimbursement must retain all relevant documents pertaining to construction or other reimbursable changes or expenses for a period ending not less than 10 years after the date on which the entity receives final payment from the Reimbursement Fund.

108. The Media Bureau will develop a Reimbursement Form for use by LPTV/translator and FM stations that will contain certifications similar to those on the Reimbursement Form used by full

(Continued from previous page) _____

³³¹ See generally *Financial Procedures PN*.

³³² See *id.* at 2023-25, paras. 70-78.

³³³ *Id.* at 2025-31, paras. 79-101.

³³⁴ *Id.* at 2031, paras. 103-04.

³³⁵ *Incentive Auction R&O*, 29 FCC Rcd at 6815-16, para. 607 and 6826, para. 635, n.1770.

³³⁶ See *NPRM*, 33 FCC Rcd at 7887, para. 76.

³³⁷ See NPR Comments at 12.

³³⁸ See HC2 Reply at 6-7.

³³⁹ See *NPRM*, 33 FCC Rcd at 7891-92, paras. 88-89. Measures to prevent waste, fraud and abuse relative to the Eligibility Certification are described in paragraph 93 *supra*.

³⁴⁰ See 47 CFR § 73.3700(e)(6).

power, Class A, and MVPD entities.³⁴¹ Thus, an LPTV/translator or FM station seeking reimbursement must certify, *inter alia*, that it believes in good faith that it will reasonably incur all of the estimated costs that it claims as eligible for reimbursement on the estimated cost form, it will use all money received from the Reimbursement Fund only for expenses it believes in good faith are eligible for reimbursement, and it will comply with all policies and procedures related to reimbursement.³⁴²

109. As noted above, we will conduct audits, data validations, and site visits,³⁴³ as appropriate, to prevent waste, fraud, and abuse and to maximize the amount of money available for reimbursement. We disagree with HC2's contention that audits or other validations by a third-party are unnecessary to substantiate certifications such as the minimum operating requirements for LPTV/translator stations.³⁴⁴ The Commission has previously determined that, with respect to the incentive auction reimbursement program, "audits, data validations, and site visits are essential tools in preventing waste, fraud, and abuse, and that use of these measures will maximize the amount of money available for reimbursement."³⁴⁵ Based on our experience administering the reimbursement program for full power and Class A stations and MVPDs, we continue to believe that audits, site visits, and other validation mechanisms are essential for preventing waste, fraud, and abuse. We remind stations that a false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission's rules.³⁴⁶ If we discover evidence of intentional fraud, we will refer the matter to the Commission's Office of Inspector General or to law enforcement for criminal investigation, as appropriate.

110. Finally, to ensure transparency with respect to the Reimbursement Fund, we will make eligibility and actual cost information available to the public as well as information regarding Reimbursement Fund disbursements. This is similar to the process used with respect to full power, Class A, and MVPD reimbursement.

IV. OTHER ISSUES

111. *Reimbursement of Indirect Expenses for Full Power and Class A Stations.* We decline a suggestion put forth by Cox and supported by NAB to permit full power television stations to seek reimbursement under the new REA provisions for costs that are not the result of their own channel change, but instead are the result of a collocated station's repacking activities.³⁴⁷ The *NPRM* did not

³⁴¹ See *id.* § 73.3700(e)(2)(ii).

³⁴² *Id.*

³⁴³ LPTV Coalition urges us to ensure that any site visits and other measures related to reimbursement not be combined with FCC inspections related to compliance with other non-reimbursement related rules. See LPTV Coalition Comments at 7. While the focus of our efforts to prevent waste, fraud, and abuse will be directed to reimbursement funds, we will not ignore any other rule violations that our efforts uncover.

³⁴⁴ HC2 Reply at 4. HC2 argues that documentation requirements alone "are sufficient to demonstrate that the 'transmitting' requirement has been satisfied, and the Commission should avoid creating any unnecessary and duplicative efforts for LPTVs to qualify for reimbursement." *Id.*

³⁴⁵ *Incentive Auction R&O*, 29 FCC Rcd at 6826, para. 635.

³⁴⁶ Section 1.17 of the Commission's rules requires that licensees must provide truthful and accurate information in all interactions with the Commission. 47 CFR § 1.17. Violation of this rule may subject the applicant to a monetary forfeiture pursuant to Sections 502 and/or 503 of the Communications Act, 47 U.S.C. §§ 502 and 503. An intentional false certification also may be sanctioned under Section 1001 of Title 18 of the United States Code, 18 U.S.C. § 1001, which makes it a crime, punishable by a \$10,000 fine, or five years imprisonment, or both, to knowingly and willfully make "any false, fictitious or fraudulent statements or representation" with respect to any matter within the jurisdiction of a federal agency.

³⁴⁷ See Comments of Cox Media Group, LLC and Cox Enterprises, Inc., at 1-2 (Sept. 26, 2018) (Cox Comments); NAB Reply at 5-6. Cox notes that certain full power television stations may incur expenses as a result of another repacked station making changes to their shared tower site. See Cox Comments at 2. For example, Cox states that the repacked station may need to replace its antenna, and during this process other stations may need to either move

(continued....)

propose to revisit issues with respect to reimbursement of full-power and Class A stations. We therefore dismiss this request because it is beyond the scope of the *NPRM*. On alternative and independent grounds, we note that Cox has in any event provided no basis for revisiting our prior decision, which is compelled by our reading of the statute. Cox and NAB acknowledge that the Commission has previously declined to allow reimbursement for stations that incur indirect expenses due to repacking activities for other stations based on concerns over potential exhaustion of available repacking funds.³⁴⁸ However, because in some cases a repacked station may not have an express contractual obligation to reimburse collocated stations for repack expenses, Cox maintains that there exists an “inequitable situation where some full-power television stations can have their direct repack expenses reimbursed, whereas other stations must pay for their costs themselves, depending on when their tower leasing agreements were drafted.”³⁴⁹ Although we are sensitive to the fact that it is possible that some stations may incur expenses as a result of a repacked station implementing its post-auction channel facilities, consistent with the Spectrum Act, we only allow reimbursement of a television station’s own repack expenses, that is, expenses “to relocate its television service from one channel to the other.”³⁵⁰ In the scenario posited by Cox, the expenses are not incurred by the station “to relocate its television service from one channel to the other,” but instead are incurred because of a different station’s repacking activities. Thus, we do not have statutory authority to permit reimbursement of such expenses. As we said in the *Incentive Auction R&O*, we allow reimbursement to the repacked station in this scenario if it had an express contractual obligation to pay the expenses of other collocated stations as of the date of release of the *Incentive Auction R&O*.³⁵¹

V. PROCEDURAL MATTERS

112. *Paperwork Reduction Analysis*.—This Report and Order contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new and modified information collection requirements contained in the proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,³⁵² we previously sought specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”³⁵³ We have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA), attached as Appendix B.

(Continued from previous page) _____

off the tower or install side-mounted antennas to carry their stations. *Id.* Alternatively, Cox states that stations may be required to power down or go silent while the repacked station undertakes its necessary modifications, resulting in a temporary loss of service. *Id.* at 2-3. Cox maintains that this would be contrary to the Spectrum Act’s intention that viewers be protected and station coverage be preserved. *Id.* at 3.

³⁴⁸ Cox Comments at 6 (citing *Incentive Auction Report and Order*, 29 FCC Rcd at 6567, para. 602); NAB Reply at 6 (same). As Cox notes, the current rules allow the reimbursement of expenses only if they are related to a station’s own channel change or if the repacked station has a written contractual obligation to pay for expenses incurred by other stations, such as stations on a collocated tower. Cox Comments at 3 (citing FCC, *Post-Auction Reimbursement: Broadcaster Frequently Asked Questions*, at p. 11 (last updated July 24, 2018), <https://www.fcc.gov/sites/default/files/reimbursement-faqs07242018.pdf>).

³⁴⁹ Cox Comments at 4.

³⁵⁰ 47 U.S.C. § 1452(b)(4)(A)(i).

³⁵¹ *Id.*

³⁵² Pub. L. No. 107-198.

³⁵³ 44 U.S.C. § 3506(c)(4).

113. *Congressional Review Act.*—The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

114. *Regulatory Flexibility Act.*—The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”³⁵⁴ The FRFA concerning the impact of the rule changes contained in the Report and Order is attached as Appendix B.

VI. ORDERING CLAUSES

115. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1, 4, 303, and 336(f) of the Communications Act of 1934, as amended, Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, and Section 511, Division E, Title V of the Consolidated Appropriations Act, 2018, Pub. L. 115-141 (2018), 47 U.S.C. §§ 151, 154, 303, 336(f), 1452, this Report and Order in MB Docket No. 18-214 and GN Docket No. 12-268 **IS ADOPTED**.

116. **IT IS FURTHER ORDERED** that the amendments of the Commission’s rules as set forth in Appendix A **ARE ADOPTED**, effective thirty (30) days after publication in the Federal Register, except for Section 37.701(c) which contains new or modified information collection requirements that require review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission directs the Media Bureau to announce the effective date of those information collections in a document published in the Federal Register after the Commission receives OMB approval.

117. **IT IS FURTHER ORDERED** that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

118. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁵⁴ 5 U.S.C. §§ 601 *et seq.*

APPENDIX A**Final Rules****PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336 and 339.

2. A new rule Section 73.3701 is added as follows:

§ 73.3701 Reimbursement Under the Reimbursement Expansion Act.**(a) Definitions -**

(1) Eligibility Certification/Reimbursement Form. For purposes of this section, the term Eligibility Certification/Reimbursement Form means the form(s) developed by the Media Bureau for processing reimbursement requests under the Reimbursement Expansion Act.

(2) FM station. For purposes of this section, the term FM station means an “FM broadcast station” as defined in 47 CFR section 73.310.

(3) Incentive Auction. For purposes of this section, the term Incentive Auction means the broadcast television spectrum incentive auction and repacking process conducted under section 6403 of the Spectrum Act specifying the new channel assignments and technical parameters of any broadcast television stations that are reassigned to new channels.

(4) Licensed. For purposes of this section, the term licensed means a station that was licensed or that had an application for a license to cover on file with the Commission on April 13, 2017.

(5) Low power television station. For purposes of this section, the term low power television station means a low power television station as defined in 47 CFR section 74.701.

(6) Predetermined cost estimate. For purposes of this section, predetermined cost estimate means the estimated cost of an eligible expense as generally determined by the Media Bureau in a catalog of expenses eligible for reimbursement.

(7) Reimbursement Expansion Act or REA. For purposes of this section, the term Reimbursement Expansion Act or REA means Division E, Financial Services & General Appropriation Act, 2018, Title V Independent Agencies, Pub. L. No 115-141, Section 511 (codified at 47 U.S.C. § 1452(j)-(n)) adopted as part of the Consolidated Appropriations Act, 2018, Pub. L. No. 115-141 (2018).

(8) Reimbursement period. For purposes of this section, reimbursement period means the period ending July 3, 2023, pursuant to section 511(j)(3)(B) of the REA.

(9) Replacement translator station. For purposes of this section, the term replacement translator station means analog to digital replacement translator stations authorized pursuant to 47 CFR section 74.787(a)(5).

(10) Spectrum Act. For purposes of this section, the term Spectrum Act means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96).

(11) Special Displacement Window. For purposes of this section, the term Special Displacement Window means the displacement application filing window conducted April 10, 2018 to June 1, 2018 for low power television, TV translator, and analog-to-digital replacement translator stations that were displaced by the incentive auction and repacking process.

(12) Transmitting. For purposes of this section, the term transmitting means a low power television station, TV translator station, or replacement translator station operating not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(13) Reimbursement Fund. For purposes of this section, the Reimbursement Fund means the additional funding established by the REA.

(14) TV translator station. For purposes of this section, the term TV translator station means a “television broadcast translator station” as defined in 47 CFR section 74.701.

(b) Only the following entities are eligible for reimbursement of relocation costs reasonably incurred:

(1) Low power television stations. Low power television stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(2) TV translator stations. TV translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(3) Replacement translator stations. Replacement translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(4) FM station. FM stations licensed and transmitting as of April 13, 2017, that experienced, at the site at which they were licensed and transmitting on that date, a disruption of service as a result of the reorganization of broadcast television spectrum under 47 U.S.C. § 1452(b).

(c) Reimbursement process.

(1) Estimated costs.

(i) All entities that are eligible to receive reimbursement will be required to file an estimated cost form providing an estimate of their reasonably incurred costs and provide supporting documentation.

(ii) Each eligible entity that submits an estimated cost form will be required to certify on its Eligibility Certification/Reimbursement Form *inter alia*, that:

(A) It is eligible for reimbursement;

(B) It believes in good faith that it will reasonably incur all of the estimated costs that it claims are

eligible for reimbursement on the estimated cost form;

(C) It will use all money received from the Reimbursement Fund only for expenses it believes in good faith are eligible for reimbursement;

(D) It will comply with all policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Fund;

(E) It will maintain detailed records, including receipts, of all costs eligible for reimbursement actually incurred;

(F) It will file all required documentation of its relocation expenses as instructed by the Media Bureau;

(G) It has not received nor does it expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA;

(H) Low power television stations, TV translator stations, and replacement translator stations must certify compliance with the minimum operating requirement set forth in subsection (b)(1), (b)(2), or (b)(3) of this section.

(I) FM stations must certify that they were licensed and transmitting at the facility implicated by the Incentive Auction on April 13, 2017.

(iii) If an eligible entity seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment.

(iv) Eligible entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith.

(2) Final Allocation Deadline.

(i) Upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, all eligible entities that received an initial allocation from the Reimbursement Fund must provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau (the "Final Allocation Deadline").

(ii) If an eligible entity has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

(3) Final accounting. After completing all construction or reimbursable changes, eligible entities that have received money from the Reimbursement Fund will be required to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

(4) Documentation requirements.

(i) Each eligible entity that receives payment from the Reimbursement Fund is required to retain all

relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the Reimbursement Fund.

(ii) Each eligible entity that receives payment from the Reimbursement Fund must make available all relevant documentation upon request from the Commission or its contractor.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* in this proceeding, released on August 3, 2018.² The Commission sought written public comment on the proposals in the *NPRM* including comment on the IRFA. We received no comments specifically directed towards the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for and Objectives of the Report and Order

2. In the *Report and Order*, we adopt rules to implement Congress's directive in the 2018 Reimbursement Expansion Act (REA) that we reimburse certain Low Power Television (LPTV) and television translator (TV translator) stations (together LPTV/translator stations), and FM broadcast stations (FM stations), for costs incurred as a result of the Commission's broadcast television spectrum incentive auction.⁴ In the REA, Congress provided additional funding for the TV Broadcaster Relocation Fund (Reimbursement Fund)⁵ and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred as a result of the reorganization of broadcast television spectrum to include LPTV/translator and FM stations.⁶ The *Report and Order* adopts rules relating to eligibility, expenses, and procedures the Commission will use to provide reimbursement to these entities, and mandates the use of various measures designed to protect the Reimbursement Fund against waste, fraud, and abuse.

3. As proposed in the *NPRM*, we adopt a process to reimburse the newly eligible entities that is substantially similar to that which we currently use to reimburse full power and Class A stations and multi-channel video programming distributors (MVPDs) as established in the *Incentive Auction R&O*.⁷ Specifically, we:

- Conclude that the REA permits the Commission to use the funds appropriated to the Reimbursement Fund for fiscal year 2019 to reimburse eligible LPTV/translator and FM stations as well as full power and Class A stations and MVPDs, and that the Commission

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855 (2018) (*NPRM*).

³ See 5 U.S.C. § 604.

⁴ See Consolidated Appropriations Act 2018, Pub. L. No. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). We refer to this legislation herein as the "Reimbursement Expansion Act" or "REA."

⁵ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act).

⁶ See 47 U.S.C. § 1452(j)(1), (k), (l). The additional funding appropriated to the Reimbursement Fund by the REA also included \$50 million to be available to the Commission to make "payments solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum" under 47 U.S.C. § 1452(b). 47 U.S.C. § 1452(j)(2)(A)(iv).

⁷ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014), *aff'd*, *National Association of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*Incentive Auction R&O*).

will prioritize payments to full power, Class A, and MVPD entities over payments to LPTV/translator and FM entities.⁸

- Conclude that LPTV/translator stations are eligible for reimbursement if: (1) they filed an application during the Commission's Special Displacement Window and obtained a construction permit, and (2) were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017, as required by the REA.⁹
- Conclude that we will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station's Special Displacement Window application.¹⁰
- Conclude that full power and low power FM stations and FM translators that were licensed and transmitting on April 13, 2017, using the facilities impacted by the repacked television station are eligible for reimbursement under the REA. We find that this will include FM stations that incur costs because they must permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service during a period of time when construction work is occurring on a collocated, adjacent, or nearby repacked television station's facilities.¹¹
- Conclude that we will reimburse up to 100 percent of the costs eligible for reimbursement for FM stations that must relocate permanently, temporarily or permanently modify facilities, or purchase or modify auxiliary equipment to avoid going silent as a result of the repacking process.¹²
- Conclude that we will not reimburse LPTV/translator or FM stations for costs for which they have already received reimbursement funding from other sources.¹³
- Require LPTV/translator and FM stations seeking reimbursement to file with the Commission one or more forms certifying that they meet the eligibility criteria established in this proceeding for reimbursement, providing information regarding their current broadcasting equipment, and providing an estimate of their costs eligible for reimbursement.¹⁴
- Find that, after the submission of information, the Media Bureau will provide eligible entities with an allocation of funds to be available for draw down as the entities incur expenses. The Media Bureau will make an initial allocation toward eligible expenses, followed by subsequent allocation(s) as needed, to the extent funds remain for LPTV/translator stations and FM stations in the Reimbursement Fund.¹⁵
- Conclude that we will use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible

⁸ For more information, see Section III.A of the *Report and Order*.

⁹ *Id.* Section III.B.1.

¹⁰ *Id.* Section III.B.2.

¹¹ *Id.* Section III.C.1.

¹² *Id.* Section III.C.2.

¹³ *Id.* Sections III.B.2.f, III.C.2.c.

¹⁴ *Id.* Section III.D.1.

¹⁵ *Id.* Section III.D.2.

LPTV/translator and FM stations, and use the same procedures to provide reimbursement payments to these newly eligible entities.¹⁶

- Discuss the measures we will take to protect the Reimbursement Fund against waste, fraud, and abuse.¹⁷

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. No comments were filed in direct response to the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁰ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²¹

7. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.²² The Small Business Administration has established a size standard for this industry of 750 employees or less.²³ Census data for 2012 show that 841 establishments operated in this

¹⁶ *Id.* Section III.D.4.

¹⁷ *Id.* Section III.D.5.

¹⁸ 5 U.S.C. § 604(a)(3).

¹⁹ 5 U.S.C. § 601(6).

²⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²¹ 15 U.S.C. § 632.

²² U.S. Census Bureau, *North American Industry Classification System*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²³ 13 CFR § 121.201; NAICS Code 334220

industry in that year. Of that number, 819 establishments operated with less than 500 employees.²⁴ Based on this data, we conclude that a majority of manufacturers in this industry are small.

8. Audio and Video Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.²⁵ The SBA has established a size standard for this industry, in which all firms with 750 employees or less are small.²⁶ According to U.S. Census data for 2012, 492 audio and video equipment manufacturers were operational in that year. Of that number, 476 operated with fewer than 500 employees.²⁷ Based on this Census data and the associated size standard, we conclude that the majority of such manufacturers are small.

9. Radio Stations. This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”²⁸ The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.²⁹ Census data for 2012 shows that 2,849 firms in this category operated in that year.³⁰ Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more.³¹ Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

10. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,619 stations³² and the number of commercial FM radio stations to be 6,754,³³ for a total number of 11,373. Of this total, 9,898 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in October 2014. In addition, the Commission has estimated the number of noncommercial

²⁴ U.S. Census Bureau, *Industry Statistics for Subsectors and Industries by Employment Size: 2012*, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_31SG2&prodType=table.

²⁵ U.S. Census Bureau, *North American Industry Classification System*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁶ 13 CFR § 121.201; NAICS Code 334310.

²⁷ U.S. Census Bureau, *Industry Statistics for Subsectors and Industries by Employment Size: 2007*, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_31SG3&prodType=table.

²⁸ U.S. Census Bureau, *2012 NAICS Definitions*, “515112 Radio Stations,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues, “Programming may originate in their own studio, from an affiliated network, or from external sources.”

²⁹ 13 CFR § 121.201; NAICS code 515112.

³⁰ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

³¹ *Id.*

³² See FCC News Release, Broadcast Station Totals as of December 31, 2018 (rel. Jan. 2, 2019).

³³ *Id.*

educational FM radio stations to be 4,135.³⁴ NCE stations are non-profit, and therefore considered to be small entities.³⁵ Therefore, we estimate that the majority of radio broadcast stations are small entities.

11. Low Power FM Stations. The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.³⁶ The Commission has estimated the number of licensed low power FM stations to be 2172.³⁷ In addition, as of December 31, 2018, there were a total of 7952 FM translator and FM booster stations.³⁸ Given that low power FM stations and FM translators and boosters are too small and limited in their operations to have annual receipts anywhere near the SBA size standard of \$38.5 million, we will presume that these licensees qualify as small entities under the SBA definition.

12. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³⁹ must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

13. Television Broadcasting. This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”⁴⁰ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: those having \$38.5 million or less in annual receipts.⁴¹ The 2012 economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. We therefore estimate that the majority of commercial television broadcasters are small entities.

14. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included.⁴² Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on

³⁴ *Id.*

³⁵ 5 U.S.C. §§ 601(4), (6).

³⁶ 13 CFR § 121.201; NAICS Code 515112.

³⁷ See FCC News Release, Broadcast Station Totals as of December 31, 2018 (rel. Jan. 2, 2019).

³⁸ *Id.*

³⁹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

⁴⁰ U.S. Census Bureau, 2012 NAICS Code Economic Census Definitions, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁴¹ 13 CFR § 121.201; NAICS code 515120.

⁴² “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 CFR § 121.103(a)(1).

which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

15. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 388.⁴³ These stations are non-profit, and therefore considered to be small entities.⁴⁴

16. There are also 2,295 LPTV stations, including Class A stations, and 3,654 TV translator stations.⁴⁵ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

17. The *Report and Order* adopts the following revised reporting or recordkeeping requirements. To implement the REA, eligible entities must file forms to demonstrate their eligibility and estimated costs for reimbursement. Specifically, the *Report and Order* states that entities will use revised versions of the forms currently being used by full power, Class A, and multichannel video programming distributors (MVPD) entities from the incentive auction for purposes of reimbursing eligible LPTV/translator and FM stations. The *Report and Order* also states that the Commission will use the procedures to provide reimbursement payments to these newly eligible entities that are similar to those it used for reimbursement in the incentive auction. For example, LPTV, TV translators, and FM stations will be required to submit their Eligibility Certification, cost estimates, and subsequent requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the Reimbursement Form (FCC Form 2100, Schedule 399), which the Media Bureau will revise for this purpose. As required for full power and Class A stations and MVPDs, LPTV/translator and FM stations will submit the Reimbursement Form electronically via the Commission’s Licensing and Management System (LMS) database. In addition, LPTV/translator and FM stations that seek reimbursement will use a procedure and form similar to the existing FCC Form 1876 to provide financial information to the Commission in order to receive reimbursement payments, and will file electronically in the CORES Incentive Auction Financial Module.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”⁴⁶

19. The *Report and Order* adopts rules to implement the REA. The rules are designed allow all entities, including small entity broadcasters, to seek reimbursement in a manner that is streamlined and the least burdensome. The *Report and Order* adopts a reimbursement process for newly eligible

⁴³ See FCC News Release, Broadcast Station Totals as of December 31, 2018 (rel. Jan. 2, 2019).

⁴⁴ See generally 5 U.S.C. § 601(4), (6).

⁴⁵ See FCC News Release, Broadcast Station Totals as of December 31, 2018 (rel. Jan. 2, 2019).

⁴⁶ 5 U.S.C. § 603(c)(1)-(4).

LPTV/translator and FM stations that is substantially similar to the current reimbursement process. We conclude that using a process and resources that have proven effective and that are already familiar to many of the entities that will be seeking reimbursement will help result in a smooth and efficient reimbursement process for newly eligible entities. At the same time, we indicate in the item that we will simplify and streamline the forms to be used by newly eligible entities, to the extent possible, in order to expedite and facilitate the reimbursement process. Some commenters urged us to make as few changes as possible to the existing forms to avoid the need for broadcasters and others who are used to the current forms to spend time and resources familiarizing themselves with new forms. As we state in the item, our goal is to incorporate changes that facilitate and streamline the reimbursement process while avoiding unnecessary changes that could negatively affect users.

20. We considered and ultimately rejected a proposal that we use a “Fast Track” approach to streamline reimbursement applications for stations willing to accept a strict dollar cap on their reimbursement. NTA proposed that stations that opt to use the proposed “Fast Track” approach be exempt from certain reimbursement requirements, including the requirement to submit cost estimates and the requirement to reuse existing equipment. While we share the goals these commenters are seeking to achieve of simplifying and expediting the reimbursement process, we concluded that the “Fast Track” proposal is not a feasible option because it is critical that we obtain an accurate estimate of eligible expenses from all entities requesting reimbursement to ensure that we are not over-allocating for a particular entity and that we have the information regarding the total demand on the Reimbursement Fund. We also note that the REA itself contemplates that entities seeking reimbursement will submit cost estimates. In addition, although NTA’s position on this is unclear, we cannot, consistent with the REA, excuse entities from making the certifications in the Eligibility Certification that are necessary to ensure that entities seeking reimbursement meet the criteria for eligibility established in this proceeding. Similarly, we must obtain other information from entities seeking reimbursement, such as their existing broadcasting equipment, to ensure that we have adequate information upon which to make reasoned allocation decisions and avoid waste, fraud, and abuse. Thus, upon consideration, we could not identify any filings or procedures that could be eliminated in a manner that would make a “Fast Track” achievable.

G. Report to Congress

21. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.⁴⁷ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.⁴⁸

⁴⁷ See 5 U.S.C. § 801(a)(1)(A).

⁴⁸ See 5 U.S.C. § 604(b).